



**FY 2004**  
**Funding Guidelines**  
**Volume Two**  
**Statutes and Regulations**

*Centennial Clean Water Fund*

*Clean Water Act Section 319*  
*Nonpoint Source Fund*

*Washington State Water Pollution*  
*Control Revolving Fund*

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## Chapter 70.146 RCW, Water Pollution Control Facilities Financing

**RCW 70.146.010 - Purpose -- Legislative intent.** The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that the water quality account shall not be used for such purposes.

**RCW 70.146.020 - Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

- (1) "Account" means the water quality account in the state treasury.
- (2) "Department" means the department of ecology.
- (3) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.
- (4) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.
- (5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.
- (6) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.
- (7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.
- (8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff

from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b).

**RCW 70.146.030 - Water quality account -- Progress report.** (1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the Senate committee on ways and means and the House of Representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.

(4) During the fiscal biennium ending June 30, 1997, moneys in the account may be transferred by the legislature to the water right permit processing account.

**RCW 70.146.040 - Level of grant or loan not precedent.** No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made from the water quality account thereafter.

**RCW 70.146.050 - Compliance schedule for secondary treatment.** The department of ecology may provide for a phased in compliance schedule for secondary treatment which addresses local factors that may impede compliance with secondary treatment requirements of the federal clean water act. In determining the length of time to be granted for compliance, the department shall consider the criteria specified in the federal clean water act.

**RCW 70.146.060 - Water quality account distributions -- Limitations.** During the period from July 1, 1987, until June 30, 1995, the following limitations shall apply to the department's total distribution of funds appropriated from the water quality account:

- (1) Not more than fifty percent for water pollution control facilities which discharge directly into marine waters;
- (2) Not more than twenty percent for water pollution control activities that prevent or mitigate pollution of underground waters and facilities that protect federally designated sole source aquifers with at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;
- (3) Not more than ten percent for water pollution control activities that protect freshwater lakes and rivers including but not limited to Lake Chelan and the Yakima and Columbia rivers;
- (4) Not more than ten percent for activities which control nonpoint source water pollution;
- (5) Ten percent and such sums as may be remaining from the categories specified in subsections (1) through (4) of this section for water pollution control activities or facilities as determined by the department; and
- (6) Two and one-half percent of the total amounts of moneys under subsections (1) through (5) of this section

from February 21, 1986, until December 31, 1995, shall be appropriated biennially to the state conservation commission for the purposes of this chapter. Not less than ten percent of the moneys received by the state conservation commission under the provisions of this section shall be expended on research activities.

The distribution under this section shall not be required to be met in any single fiscal year.

Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements.

**RCW 70.146.070 - Grants or loans for water pollution control facilities -- Considerations.** (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

- (a) The protection of water quality and public health;
  - (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
  - (c) Actions required under federal and state permits and compliance orders;
  - (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
  - (e) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and
  - (f) The recommendations of the Puget Sound action team and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.
- (2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.40 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.40. This subsection does not require any county, city, or town planning under RCW 36.70A.40 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.40. A county, city, or town planning under RCW 36.70A.40 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.40 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.40 before submitting a request for a grant or loan.
- (3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.40, it shall consider whether the county, city, or town planning under RCW 36.70A.40 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.40.

**RCW 70.146.075 - Extended grant payments.** (1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments shall be for a period not to exceed twenty years.

The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature from the water quality account shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts.

**RCW 70.146.080 - Determination of tax receipts in water quality account -- Transfer of sufficient moneys from general revenues.** Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars. For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991. For fiscal year 1992 and for fiscal years 1995 and 1996 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. Determinations and transfers shall be made by July 31 for the preceding fiscal year.

**RCW 70.146.900 - Severability -- 1986 c 3.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

## **Chapter 90.50A RCW, Water Pollution Control Facilities –Federal Capitalization Grants**

**RCW 90.50A.005 Purpose.** The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide an account to receive federal capitalization grants to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters. [1988 c 284 § 1.]

**RCW 90.50A.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Eligible cost" means the cost of that portion of a water pollution control facility or activity that can be financed under this chapter.

(3) "Fund" means the water pollution control revolving fund in the custody of the state treasurer.

(4) "Water pollution control facility" or "water pollution control facilities" means any facilities or systems owned or operated by a public body for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes:

(a) To control nonpoint sources of water pollution; (b) to develop and implement a comprehensive management plan for estuaries; and (c) to maintain or improve water quality through the use of water pollution control facilities or other means.

(6) "Public body" means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Federal capitalization grants" means grants from the federal government provided by the water quality act of 1987 (P.L. 100-4). [1988 c 284 § 2.]

**RCW 90.50A.020 Water pollution control revolving fund.** (1) The water pollution control revolving fund is hereby established in the state treasury. Moneys in this fund may be spent only after legislative appropriation. Moneys in the fund may be spent only in a manner consistent with this chapter.

(2) The water pollution control revolving fund shall consist of:



- (a) All capitalization grants provided by the federal government under the federal water quality act of 1987;
- (b) All state matching funds appropriated or authorized by the legislature;
- (c) Any other revenues derived from gifts or bequests pledged to the state for the purpose of providing financial assistance for water pollution control projects;
- (d) All repayments of moneys borrowed from the fund;
- (e) All interest payments made by borrowers from the fund;
- (f) Any other fee or charge levied in conjunction with administration of the fund; and
- (g) Any new funds as a result of leveraging.
- (3) The state treasurer may invest and reinvest moneys in the water pollution control revolving fund in the manner provided by law. All earnings from such investment and reinvestment shall be credited to the water pollution control revolving fund. [1993 c 329 § 1; 1992 c 235 § 9; 1991 sp.s. c 13 § 102; 1988 c 284 § 3.]

**RCW 90.50A.030 Use of moneys in fund.** The department of ecology shall use the moneys in the water pollution control revolving fund to provide financial assistance as provided in the water quality act of 1987:

- (1) To make loans, on the condition that:
- (a) Such loans are made at or below market interest rates, including interest free loans, at terms not to exceed twenty years;
- (b) Annual principal and interest payments will commence not later than one year after completion of any project and all loans will be fully amortized not later than twenty years after project completion;
- (c) The recipient of a loan will establish a dedicated source of revenue for repayment of loans; and
- (d) The fund will be credited with all payments of principal and interest on all loans.
- (2) Loans may be made for the following purposes:
- (a) To public bodies for the construction or replacement of water pollution control facilities as defined in section 212 of the federal water quality act of 1987;
- (b) For the implementation of a management program established under section 319 of the federal water quality act of 1987 relating to the management of nonpoint sources of pollution, subject to the requirements of that act; and
- (c) For development and implementation of a conservation and management plan under section 320 of the federal water quality act of 1987 relating to the national estuary program, subject to the requirements of that act.
- (3) The department may also use the moneys in the fund for the following purposes:
- (a) To buy or refinance the water pollution control facilities' debt obligations of public bodies at or below market rates, if such debt was incurred after March 7, 1985;
- (b) To guarantee, or purchase insurance for, public body obligations for water pollution control facility construction or replacement or activities if the guarantee or insurance would improve credit market access or reduce interest rates, or to provide loans to a public body for this purpose;
- (c) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of the sale of such bonds will be deposited in the fund;
- (d) To earn interest on fund accounts; and
- (e) To pay the expenses of the department in administering the water pollution control revolving fund according to administrative reserves authorized by federal and state law.
- (4) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the House of Representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both.
- (5) The department may not use the moneys in the water pollution control revolving fund for grants. [1996 c 37 § 4; 1988 c 284 § 4.]

**RCW 90.50A.040 Administration of fund.** Moneys deposited in the water pollution control revolving fund shall be administered by the department of ecology. In administering the fund, the department shall:

- (1) Allocate funds for loans in accordance with the annual project priority list in accordance with section 212 of the federal water pollution control act as amended in 1987, and allocate funds under sections 319 and 320 according to the provisions of that act;
- (2) Use accounting, audit, and fiscal procedures that conform to generally accepted government accounting standards;
- (3) Prepare any reports required by the federal government as a condition to awarding federal capitalization grants;
- (4) Adopt by rule any procedures or standards necessary to carry out the provisions of this chapter;
- (5) Enter into agreements with the federal environmental protection agency;
- (6) Cooperate with local, substate regional, and interstate entities regarding state assessment reports and state management programs related to the nonpoint source management programs as noted in section 319(c) of the federal water pollution control act amendments of 1987 and estuary programs developed under section 320 of that act; and
- (7) Comply with provisions of the water quality act of 1987. [1988 c 284 § 5.]

**RCW 90.50A.050 Loans from fund -- Requirements for recipients.** Any public body receiving a loan from the fund shall:

- (1) Appear on the annual project priority list to be identified for funding under section 212 of the federal water pollution control act amendments of 1987 or be eligible under sections 319 and 320 of that act;
- (2) Submit an application to the department;
- (3) Establish and maintain a dedicated source of revenue or other acceptable source of revenue for the repayment of the loan; and
- (4) Demonstrate to the satisfaction of the department that it has sufficient legal authority to incur the debt for which it is applying. [1988 c 284 § 6.]

**RCW 90.50A.060 Defaults.** If a public body defaults on payments due to the fund, the state may withhold any amounts otherwise due to the public body and direct that such funds be applied to the indebtedness and deposited into the account. [1988 c 284 § 7.]

**RCW 90.50A.070 Establishment of policies for loan terms and interest rates.** The department shall establish by rule policies for establishing loan terms and interest rates for loans made from the fund that assure that the objectives of this chapter are met and that adequate funds are maintained in the fund to meet future needs. [1988 c 284 § 8.]

**RCW 90.50A.900 Severability -- 1988 c 284.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 284 § 14.]

## **Chapter 173.95A WAC, Uses and Limitations of Centennial Clean Water Funds**

### **Sections:**

<b>WAC 173-95A-010</b>	<b>What is the purpose of this chapter?</b>
<b>WAC 173-95A-020</b>	<b>What are the definitions of key terms?</b>
<b>WAC 173-95A-030</b>	<b>How and under what conditions can money from the centennial fund be used?</b>
<b>WAC 173-95A-040</b>	<b>Where can I obtain details about the application and review process for centennial funds?</b>
<b>WAC 173-95A-050</b>	<b>How can a local area have a role in determining funding priorities?</b>
<b>WAC 173-95A-060</b>	<b>What are the limitations on the use of funds?</b>
<b>WAC 173-95A-070</b>	<b>How does the Growth Management Act impact the use of funds?</b>
<b>WAC 173-95A-080</b>	<b>What is the "step process" for planning facilities and activities projects?</b>
<b>WAC 173-95A-090</b>	<b>What other laws, regulations or requirements must recipients comply with?</b>
<b>WAC 173-95A-100</b>	<b>How are grants and loans managed?</b>
<b>WAC 173-95A-110</b>	<b>General provisions.</b>

### **WAC 173-95A-010 What is the purpose of this chapter?**

The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the water quality account, as authorized by chapter 70.146 RCW. This fund provides financial assistance, in the form of loans and grants to meet high priority water quality management needs, to public bodies throughout the state of Washington. Funded projects must address water quality problems related to public health and environmental degradation. In order to encourage the timely use of funds provided by the state legislature, priority will be given to projects shown to be ready to proceed.

### **WAC 173-95A-020 What are the definitions of key terms?**

- (1) "Activities" - see "water pollution control activity."
- (2) "Applicant" means a public body that has applied for funding.
- (3) "Best management practices" means physical, structural, and/or managerial practices, approved by the department, that, when used singularly or in combination, prevent or reduce pollutant discharges.
- (4) "Cash match" means funds to match the state share of a grant that are under the sole control of a public body.
- (5) "Centennial" means the centennial clean water fund.
- (6) "Ceiling amounts" means the largest amount of financial assistance the department can provide to an individual project. Ceiling amounts vary based on factors including the type of project and whether a loan or a grant is awarded.
- (7) "Commercial, industrial, and institutional flows" means the portion of the total flows to a facilities project that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.
- (8) "Cost-effective alternative" means the alternative with the lowest present worth or equivalent annual value that achieves the requirements of the facility and that recognizes environmental and other nonmonetary considerations.
- (9) "Department" means the department of ecology.
- (10) "Easement," for the purposes of this rule, means a written agreement between a public body and an individual landowner, that allows the public body to have access to the property at any time to inspect, maintain, or repair activities or facilities installed with a loan or a grant, or to hold occasional public tours of the site for educational purposes.
- (11) "Eligible cost" means the portion of the cost of the facilities or activities project that can be financed under the provisions of this chapter.

(12) "Enforcement order" means an administrative order that is a document issued by the department under the authority of RCW 90.48.120 and that directs a public body to complete a specified course of action within an explicit period of time to achieve compliance with the provisions of chapter 90.48 RCW.

(13) "Engineering report" means a report that evaluates engineering and other alternatives that meet the requirements set forth in chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(14) "Environmental emergency" means a problem that a public body and the department agree poses a serious, immediate threat to the environment or to the health or safety of a community, and requires immediate corrective action.

(15) "Estimated construction cost" means the estimated sum of moneys, excluding sales tax, to be paid to construction contractors and suppliers for all labor, materials, equipment, and other related work necessary to construct the proposed project.

(16) "Existing needs" means water pollution control facilities capability for the existing population in order to meet the requirements of the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(17) "Existing residential need" means water pollution control facilities capability for the existing residential population in order to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(18) "Excess capacity" means water pollution control facilities capability beyond what is needed for the existing residential population to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(19) "Extended grant payments" means cash disbursements for eligible project costs made under a multiyear centennial grant agreement according to conditions established in RCW 70.146.075 and funded through legislative appropriations. Extended grant payments do not follow the normal process of reimbursement for actual costs incurred.

(20) "Facilities plan" means an engineering report that includes all the elements required by the National Environmental Policy Act, other federal statutes, and planning requirements under chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(21) "Facilities" - see "water pollution control facilities."

(22) "Force account" means loan or grant project work performed using labor, materials, or equipment of a public body.

(23) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.

(24) "Funding cut-off line" means the position on a final offer list ranked by priority below which financial assistance will not be offered from that fund, proviso, or funding category.

(25) "Funding list" - see "offer list."

(26) "Grant agreement" means a contractual arrangement between a public body and the department that includes an approved scope of work, total project cost, set grant percentage, eligible costs, budget, and a schedule for project completion (in addition to other requirements).

(27) "Immediate corrective action" means that the director of the department or the director's designee has determined that the project must proceed to correct the problem in a timely manner before funds are available during the next regular funding cycle. This usually would involve a "public health emergency" or an "environmental emergency."

(28) "Indirect cost" means costs that benefit more than one activity of the recipient and that may not be directly assigned to a particular project objective.

(29) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.

(30) "Infiltration and inflow correction" means the cost-effective alternative or alternatives identified in an approved facilities plan or engineering report for eliminating or reducing the infiltration and inflow from an existing sewer system.

(31) "In-kind contributions" means the value of noncash contributions provided by a public body or any other approved parties.

(32) "Interlocal costs" means the cost of goods or services provided to a project under the terms of an interlocal agreement by a public body eligible to apply for centennial funds. These costs may be considered as part of a cash match if they are eligible for funding under the grant agreement.

(33) "Loan agreement" means a contractual arrangement between a public body and the department that involves a disbursement of funds that must be repaid. The agreement includes an approved scope of work, total project cost, loan terms (including interest rates) and a repayment schedule.

(34) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.

(35) "Local prioritization process" means a process to prioritize projects locally as specifically described in Section 050 of this chapter.

(36) "Match" means the portion of the eligible project costs not covered by a grant, including actual cash outlays, and noncash (in-kind) contributions.

(37) "Maximum eligible costs" means the ceiling on the portion of the costs of a project that are eligible.

(38) "Nonpoint source water pollution" means pollution that enters any waters from widespread water- or land-based activities. Nonpoint source water pollution includes, but is not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, and forest lands; subsurface or underground sources; and discharges from boats or other marine vessels.

(39) "Offer list" means a list of projects prioritized for receiving financial assistance from the centennial program.

(40) "Previously funded objective" means a project or project element intended to address the same need as a project or project element that has been previously funded by a loan or grant from a funding program administered by the department.

(41) "Project" means water pollution control facilities or activities for which a loan or grant is awarded by the department.

(42) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized by the federal government.

(43) "Public health emergency" means a situation in which illness or exposure known to cause illness is occurring or is imminent (as determined by the Washington State department of health).

(44) "Recipient" means a public body that applied for funding, has been offered funding, and has signed a funding agreement with the department.

(45) "Scope of work" means a detailed description of a project, including measurable objectives useful for determining successful completion. The scope of work is negotiated between the department and the loan or grant recipient.

(46) "Severe public health hazard" means a situation in which the potential for illness exists, but illness is not occurring or imminent (as determined by the Washington State department of health).

(47) "Sewer" means a pipe and related pump stations located on public property, or on public rights of way and easements, that conveys wastewater from individual buildings or groups of buildings to a treatment plant.

(48) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(49) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.

(50) "Step process" means a systematic process that facilities projects must follow to be eligible for loans or grants.

(51) "Total eligible project cost" means the sum of all costs associated with a water quality project that have been determined to be eligible for loan or grant funding.

(52) "Total project cost" means the sum of all eligible and ineligible costs associated with a water quality project.

(53) "Water pollution control activities" or "activities" means actions taken by a public body for the following purposes:

- (a) To prevent or mitigate pollution of underground water;
- (b) To control nonpoint sources of water pollution;
- (c) To restore the water quality of freshwater lakes; and
- (d) To maintain or improve water quality through the use of water pollution control facilities or other means.

(54) "Water pollution control facilities" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including, but not limited to, sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(55) "Water pollution" means contamination or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters; or any discharge of a liquid, gas, solid, radioactive substance, or other substance into any waters of the state that creates a nuisance or renders such waters harmful, detrimental, or injurious to the public, to beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(56) "Water resource inventory area" or "WRIA" means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in chapter 173-500 WAC as it existed on January 1, 1997.

#### **WAC 173-95A-030 How and under what conditions, can money from the centennial fund be used?**

(1) Uses of the money. The centennial fund may be used for the following purposes:

(a) To make loans and grants to applicants in order to finance the planning, design, or construction of water pollution control facilities; and

(b) To make loans and grants to applicants for the implementation of nonpoint source pollution control management programs subject to the requirements of chapter 70.146 RCW. Nonpoint source pollution control management programs include planning and implementing elements of the nonpoint source pollution assessment and management program.

(2) Eligibility to apply for funding. Eligible applicants and funding recipients under the centennial fund are public bodies, including the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized by the federal government.

(3) Program integration. While maintaining the integrity of individual funding programs, the department will combine the management of the centennial program with certain compatible funding programs, including, but not limited to, the Washington state water pollution control revolving fund, and the Clean Water Act, Section 319 nonpoint source fund. The combined management will include combined funding cycles, combined program guidelines, and combined funding offer lists. Applicants will not be asked to apply for funds from a specific funding source, only whether they are applying for loan or grant funding for their projects. After developing a prioritized list of projects proposed for funding (based on review of applications), the department will decide which funding source best meets the needs of each individual project. •

(4) Unless demand for funding for activities projects is limited, a maximum of two-thirds of the available funds for competitive projects for any fiscal year will be made available for projects related to water pollution control facilities.

(5) Normally, the department will fund loan projects or the loan portion of loan and grant projects from the Washington state water pollution control revolving fund whenever the project is eligible for state water pollution control revolving loan fund funding and the funding is available.

(6) Funding for activities projects:

(a) Activities grants made under the centennial program must be matched with any combination of cash or in-kind that totals twenty-five percent of the total eligible project cost.

(b) Grants for activities projects made under the centennial program are subject to ceiling amounts of:

(i) Five hundred thousand dollars if the match for the grant is entirely in the form of cash; or

(ii) Two hundred fifty thousand dollars if any part of the match is in the form of in-kind goods and services.

(c) Loans for activities projects made under the centennial program are subject to ceiling amounts of five hundred thousand dollars and no match is required.

(7) Funding for facilities projects:

(a) Applicants seeking funding for facilities projects may only apply for loans, but may specify on their application that they would like their project to be analyzed for financial hardship consideration. Some grant funding may be available each funding cycle for a limited number of facilities projects that qualify for financial hardship consideration.

(b) Ceiling amounts for loans under the centennial program: Loans for facilities projects are limited to half the total eligible cost of the project, or five million dollars, whichever is less: Provided, That this amount does not exceed one-third of the available funds for competitive projects for a single funding cycle.

(c) No match is required for loans made under the centennial program.

(d) Ceiling amounts for grants for facilities construction projects made to offset hardship under the centennial program: When a hardship analysis by the department shows that an applicant requesting funding for a facilities construction or "step three" project is eligible for grants, facilities construction grants made under the centennial program are subject to ceiling amounts of half the total eligible cost of the project plus an unemployment differential, as described in subsection (8)(c)(ii) of this section, or five million dollars, whichever is less: Provided, That this amount does not exceed one-third of the available funds for competitive projects for that fiscal year. These ceiling amounts are the maximum that can be provided in the form of grant funds for the life of the project as specified in a facilities plan approved by the department, except as provided for in (h) of this subsection.

(e) Ceiling amounts for grants for facilities projects consisting of combined design and construction: When a hardship analysis by the department shows that a recipient initiating a facilities design and construction or "step four" project, as provided for in WAC 173-95A-080 (2)(d), is eligible for grants, facilities construction grants made under the centennial program are subject to ceiling amounts of half the total eligible cost for the construction portion of the project. The total project cost under step four may not exceed one million dollars. If the total project cost for a step four project exceeds one million dollars, no portion of the project may be funded with centennial loan or grant funds.

(f) Facilities grants to meet hardship made under the centennial program must be matched with sufficient cash to meet the total eligible project cost when combined with the grant amount. The applicant is encouraged to negotiate a funding package that provides funding for the total eligible project cost in the form of loans and grants from the department. Towards this goal, the applicant must accept a loan from the department for all or part of the remainder of the total eligible project cost. At a minimum, this loan must be for the remaining portion of the eligible cost of the project, or for an amount equal to the grant portion, whichever is less.

(g) A facilities construction project that is eligible for grant funding due to hardship consideration and is prioritized exactly at the funding cutoff point for facilities projects on the final offer list may receive only partial grant funding in a single funding cycle due to lack of available funds. In this case, if funds are available for the project and if the project can be shown to have proceeded during the intervening year according to the provisions of WAC 173-95A-100, the project will be offered the remaining amount as eligible under (b) of this subsection in the next funding cycle, subject to sufficient legislative appropriation.

(h) In exceptional cases where extreme levels of financial hardship exist, and the total eligible grant amount of a project has been determined by the department to be greater than five million dollars, applicants may be awarded financial assistance in the form of equal annual extended payment grants over a period of at least ten and no more than twenty years. Extended grant payments must be approved by the legislature and funding must be appropriated in the Washington State biennial capital budget for each biennium in which extended grant payments are made.

(8) Financial hardship assistance for facilities construction:

(a) Financial hardship assistance may be available to loan recipients for the existing residential need portion of a water pollution control facilities construction project if the project will cause a residential sewer user charge in excess of one-and- one-half percent of the median household income.

(i) Median household income for this purpose is based on the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

(ii) If median household income data are not available for a community or if the community disputes the data used by the department, the department will allow a local government to conduct a scientific survey to determine the median household income.

(iii) In situations where a project is proposed for an area with demographics which may not be representative of the entire census designated place, the department may require the applicant to conduct a scientific survey to determine the median household income.

(iv) In rare cases where financial hardship cannot be established using residential user fees as a percent of median household income, financial hardship determinations will be made on a case-by-case basis.

(b) The need for hardship assistance is calculated on water pollution control facilities construction costs associated with existing residential need at the time an application for funding is received by the department. The analysis does not include costs for growth. For example, if an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for growth, the hardship analysis would be based on the six million dollars for existing residential need.

(c) If the department determines that financial hardship exists, it may make changes to the offer of financial assistance in an attempt to lower the residential user charges below the financial hardship level for the existing residential need. These changes may include:

(i) Structuring of the loan agreements to lengthen the repayment term to a maximum of twenty years; or

(ii) Lowering the interest rate; or

(iii) A combination of a lower interest rate and an extended term; and

(iv) If this is not sufficient, offering partial grant funding, not to exceed the ceiling amounts set in subsection (7) of this section and not to exceed fifty percent of the eligible costs plus an unemployment differential. The unemployment differential is determined by comparing the unemployment rate of the county in which the proposed project is located with the statewide unemployment rate. In cases where the three-year average for the county is at least one full percentage point above the three-year average state-wide unemployment rate, the total three-year average unemployment rate for the county, rounded to the nearest whole percentage point, will be used as the unemployment differential. The three-year average will be for the period ending on December 31 of the most recent year for which a complete report is available from the department of employment security at the time the hardship analysis is conducted.

(d) If an applicant is requesting financial hardship assistance, it should submit a completed financial hardship analysis form with its application for financial assistance.

(9) Policies for establishing the terms of financial assistance. Interest rates for recipients will be based on the average market interest rate. The average market interest rate will be based on the daily market rate published in the Bond Buyer's Index for tax exempt municipal bonds for the period from sixty to thirty days before the annual centennial funding application cycle begins, using the daily market interest rate for that period. Loan terms and interest rates are as follows:

Repayment period interest rate.



Up to five years: Thirty percent of the average market rate.

More than five but no more than twenty years: Sixty percent of the average market rate.

The director of the department or the director's designee may approve lower interest rates for annual funding application cycle for the centennial fund and the Washington state pollution control revolving fund: Provided, That this may only be done if a financial analysis of the Washington state pollution control revolving fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of that fund.

**WAC 173-95A-040 Where can I obtain details about the application and review process for centennial funds?**

(1) Applicants must apply for financial assistance in order to be considered for funding and for their projects to be included on the funding offer list. Projects must be on the funding offer list in order to receive centennial financial assistance.

(a) A schedule of the annual funding cycle will be published no later than the last business day of November each year.

(b) The period during which applications are accepted each year will last a minimum of sixty days, and application forms and guidelines for that year will be made available at the beginning of that period.

(c) In the first thirty days of the period during which applications are accepted each year, the department will conduct at least one application workshop in each of the department's four regions.

(2) The application for funding will consist of two parts. Part one of the application will request information for identification, description, and other information about the project for tracking purposes, and part two of the application will request information about the water quality problem or problems being addressed by the project and the proposed solutions to the problems. In the application, applicants will be asked to fully describe the environmental and financial need for the project. Applications for centennial financial assistance for facilities projects must address problems such as public health emergencies, severe public health hazards, the need to provide secondary or advanced treatment, the need to improve and protect water quality, reduction of combined sewer overflows, and other environmental needs. Applications for centennial financial assistance for nonpoint projects must address the remedies and prevention of water quality degradation associated with nonpoint source water pollution and must not be inconsistent with needs identified in the department's nonpoint source pollution assessment and management program.

(3) The application form, part two, will include five main question areas, each with subsidiary questions designed to elicit the information needed to evaluate the project. The maximum points awarded for these question areas equal ninety percent of the total possible score with a maximum of ten percent coming from local prioritization. The local prioritization process is described in detail in WAC 173-95A-050. The five main question areas and their associated maximum point percentages are:

(a) "What is the overall water quality problem and how will the problem be solved or addressed by the project?" This question is intended for general background purposes and to give evaluators an overview of the proposed project; no points are assigned.

(b) "What are the specific public health and water quality impairments caused by the problem and what are the pollution prevention aspects?" This question area is worth a maximum of thirty-four percent of the total score.

(c) "How will your proposed project address the water quality problem, and what are your measures of success?" This question area is worth a maximum of thirty-four percent of the total score.

(d) "What are some of the local initiatives you have taken that will help make your project a success?" This question area is worth a maximum of twelve percent of the total score.

(e) "Are there any state of Washington or federal mandates that this proposed project addresses?" This question area is worth a maximum of ten percent of the total score.

(4) The department will evaluate the proposed projects based on the information contained in the applications.

(a) Projects will be ranked according to potential water quality benefit and protection of public health.

(b) Projects which have the highest environmental and public health need will be given priority for financial assistance under the centennial program.

(c) Because funds must be used in a timely manner, readiness to proceed is also used in establishing the priority of projects.

(d) Other factors, including funding provisions in chapter 70.146 RCW, provisos identified in the department's biennial capital budget, relationship to the department's published plans, and relationship to published plans created by other federal and state agencies will be included in the priority evaluation.

(e) The department will request other agencies, including, but not limited to, the Washington state conservation commission, the Puget Sound action team, and the Washington state department of health, to provide evaluation assistance as needed.

(f) The department will coordinate maximum funding amounts and other issues with other state and federal funding agencies when possible.

(5) The total score that each proposed project receives based on the application form, part two, will be added to the local prioritization score (see WAC 173-95A-050 for more information on the local prioritization process) to develop the final score for the proposed project.

(6) The department will prepare a draft funding offer list each year after evaluating all applications. The draft funding offer list will list projects in rank order starting with the project receiving the most points in its final score. This will also generally be the order that projects may be offered financial assistance. After issuing the draft funding offer list, the department will allow a minimum of thirty days for public review and comment on the draft funding offer list. No later than fifteen days before the end of the public review and comment period the department will conduct at least one workshop to explain the draft funding offer list, answer questions about the draft funding offer list and the evaluation process, and provide details on the public comment process.

(7) The final funding offer list will be issued no later than sixty days after the end of the public review and comment period. The final funding offer list will reflect any changes made as a result of public comments or other information received during the public review and comment period, and will include a responsiveness summary. The final funding offer list will generally list projects in the order that projects may be offered financial assistance.

(8) Emergency loan funding:

(a) Emergency loan funding may be available on a case-by-case basis to respond to a public health emergency (as designated by the Washington state department of health) or an environmental emergency (as designated by the department) where:

(i) The public body requesting emergency funding immediately communicates directly with the appropriate regional office of the department; and

(ii) There is a demonstrated need for immediate corrective action; and

(iii) The emergency is not based on a preexisting condition.

(b) If the department agrees that an emergency request should be funded, department staff will attempt to identify funding for the project.

(c) No grant funds are available for emergency projects.

(d) If the emergency project is funded, the applicant must follow all other funding guidelines.

(e) Projects funded as emergencies should start immediately and be completed quickly.

#### **WAC 173-95A-050 How can a local area have a role in determining funding priorities?**

(1) Applicants may receive rating points based upon locally derived priorities. A maximum number of local prioritization points equal to ten percent of the total evaluation points available to a project may be added to the project evaluation points assigned by the department. These points are awarded to recognize the fact that local agencies and other groups may have water quality priorities that differ from the statewide water quality priorities. The department does not require that any particular criteria be used in determining local priorities, but recommends that the local group be familiar with the water quality criteria the department uses as well as any legislative mandates for funding consideration. Local prioritization is elective and applicants do not have to

engage in or complete this process to be eligible for funding consideration. However, projects will not be awarded local prioritization points if the process described here is not followed.

(2) The area used for the local prioritization process must be one entire water resource inventory area.

(3) Each local prioritization process must address all applications for water quality funding made to the department for projects located in that water resource inventory area during the annual funding cycle for that fiscal year.

(4) Priorities must be sent to the department in a written document showing a numeric priority ranking for all eligible projects in a water resource inventory area. It must be signed by the representative of the lead agency of a local planning group (if a local planning group is used) or, if an ad hoc group is used, by the authorized representatives of each of the required organizations. Signatures indicate that the represented group does not object to the specific priority ranking.

(5) In each water resource inventory area one group must complete the local prioritization effort. The department will not accept local priorities from more than one source in each water resource inventory area. The group must be one of the two types of groups described here:

(a) A local watershed planning group organized under RCW 90.82.060 (Watershed Planning Act). This group may be used only if it includes at least three of the required groups described in this section, and if this group is used, they must inform each of the other required groups of their priorities; or

(b) An ad hoc group consisting of a representative of all the required groups.

(6) The required groups are:

(a) The incorporated city, town, or municipal corporation with the largest population within the water resource inventory area; and

(b) All counties with jurisdictional responsibility for at least twenty-five percent of the area within the water resource inventory area; and

(c) The Washington state conservation district with the largest service area within the water resource inventory area; and

(d) The special purpose district providing wastewater services with the largest population within the water resource inventory area (districts that might meet this description include, but are not limited to, sewer districts, water and sewer districts, and public utility districts); and

(e) All federally recognized tribes having reservations or fishing rights within the water resource inventory area.

(7) In cases where a required signatory to the ad hoc group process refuses to become involved with the process, does not respond to the request to become involved, or agrees to become involved but does not do so, the ad hoc group may provide the department with proof that the group was asked to participate. This proof must be submitted with the signed list of priorities, by the deadline for submitting that list. Where this proof is provided, the lack of the signature will not stop the department from awarding local priority points. Proof should consist of copies of registered mail asking the required group to become involved.

(8) The list of local priorities, with signatures, is due to the department no later than forty-five days after the end of the application period each fiscal year.

#### **WAC 173-95A-060 What are the limitations on the use of funds?**

(1) The centennial fund may be used to provide financial assistance to applicants for the construction of water pollution control facilities and for water pollution control activities.

(2) Loan and grant offers identified on the final offer list will be effective for up to one year from the date of the final offer list. All loan and grant offers that do not result in a signed agreement within the effective offer period are automatically terminated.

(3) Limitations on commercial, industrial, and institutional flows:

(a) Flows from individual commercial, industrial, or institutional sources, are considered small when they are less than five percent of the total existing needs, as identified by the department's engineers. Collectively, flows from all individual commercial, industrial, or institutional sources are considered small when they are less than thirty percent of the total existing needs, as identified by the department's engineers. The

portion of a project designed to serve the needs of commercial, industrial, and institutional customers may be funded using loans only, regardless of the level of financial capability in the jurisdiction applying for funding, where the department has determined that the flows from commercial, industrial, and institutional customers are "small."

(b) That portion of a project designed to serve the needs of local public primary and secondary schools may be grant eligible in cases where the residential portion of a project has been determined to be eligible for partial grant funding due to the level of financial capability in the public body applying for funding, under the provisions of WAC 173-95A-030(8).

(4) Projects proposed by Washington state agencies will not be funded; except that activities projects undertaken by state institutions of higher education are eligible to apply for funding when the activities are not part of the school's statutory responsibilities.

(5) Ineligible projects or project elements. Certain projects or project elements, including, but not limited to, the following, are not eligible for centennial assistance:

(a) Projects related to acts of nature that alter the natural environment, thereby causing water quality problems;

(b) Cost-plus-a-percentage-of-cost contracts (also known as multiplier contracts), time and materials contracts, and percent-of-construction contracts in facilities projects;

(c) Fines and penalties due to violations of or failure to comply with federal, state, or local laws;

(d) Projects or project elements intended solely for flood control;

(e) Interest on bonds, interim financing, and associated costs to finance projects;

(f) Landscaping for aesthetic reasons;

(g) Legal expenses other than those associated with development of local ordinances for water quality protection and improvement, or with use of a bond counsel in developing a loan agreement;

(h) Lobbying or expenses associated with lobbying;

(i) Reclamation of abandoned mines;

(j) Monitoring equipment used by an industry for sampling and analysis of industrial discharges from municipal water pollution control facilities;

(k) Office equipment;

(l) Operating expenses of local government, such as the salaries and expenses of a mayor, city council member, city attorney, etc.;

(m) Routine or ongoing operation and maintenance costs;

(n) Overtime differential paid to employees of local government to complete administrative or force account work;

(o) Permit fees;

(p) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(q) Preparation of loan or grant applications;

(r) Costs associated with commercial, institutional or industrial pretreatment

(s) Professional dues;

(t) Projects or project elements solely addressing water quantity or other water resource issues;

(u) Refinance of existing debt;

(v) Replacement parts, other than those for an initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

(w) Rework costs associated with any project;

(x) Projects or project elements solely addressing solid or hazardous waste;

(y) Training staff to develop skills not identified in the loan or grant agreement;

(z) Vehicle purchase except for vehicles intended for the transportation of liquid or dewatered sludge or septage;

(aa) Water pollution control activities or facilities or portions of those facilities that are primarily intended to control, transport, treat, dispose, or otherwise manage commercial, institutional or industrial wastewater or other water pollution control needs from those sites.

(6) Loan-eligible projects or project elements. Certain projects or project elements, including, but not limited to, the following, are ineligible for centennial grant assistance, but may be eligible for centennial loan assistance:

(a) Implementation of best management practices on private property, with certain narrow exceptions listed in subsection (8) of this section;

(b) Comprehensive sewer planning, including wastewater elements of capital facilities planning under the Growth Management Act;

(c) Comprehensive storm water planning;

(d) Construction of water pollution control facilities with reserve capacities to meet up to one hundred ten percent of existing residential needs;

(e) Land acquisition as an integral part of the treatment process (e.g., land application) or for prevention of water pollution;

(f) Land acquisition for siting of water pollution control facilities, sewer rights of way, and easements, and associated costs;

(g) Land acquisition for wetland habitat preservation;

(h) Local loan fund establishment for water pollution control;

(i) New sewer systems to eliminate failing or failed on-site septic systems;

(j) Design (plans and specifications) for water pollution control facilities (including storm water facilities);

(k) Facilities plans for water pollution control facilities (including storm water facilities);

(l) Previously funded objectives;

(m) Residential and small commercial on-site septic system rehabilitation and replacement;

(n) Sewer laterals or individual pump stations or other appurtenances on private residential property;

(o) Value engineering for water pollution control facilities (including storm water facilities).

(7) Projects or project elements eligible only for loans except in hardship situations. Certain projects or project elements, including, but not limited to, the following, may be eligible or partly eligible for centennial grant assistance when hardship has been determined by the department, and eligible for a centennial loan when hardship has not been demonstrated:

(a) Construction of combined sewer overflow abatement;

(b) Construction of facilities for the control, storage, treatment, disposal, or recycling of domestic wastewater to meet existing need;

(c) Sewers and side sewer laterals on public property for infiltration and inflow correction projects;

(d) Costs associated with transferring ownership of a small wastewater system to a public body;

(e) Storm water quality control, treatment, installation, or rehabilitation necessary to protect surface and ground water;

(f) An initial set of spare parts for equipment that is critical for a facility to operate in compliance with discharge permit requirements;

(g) Sewer to replace existing water pollution control facilities.

(8) Loan or grant eligible projects or project elements. Certain projects or project elements, including, but not limited to, the following, may be eligible or partly eligible for centennial loan or grant assistance:

(a) Aquatic plant control when it has been established that water quality degradation is due to the presence of aquatic plants, and sources of pollution have been addressed sufficiently to assure that pollution being remediated does not recur;

(b) Implementation of best management practices on private property, where the practice consists of demonstration of new, innovative or alternative technology not yet demonstrated in the Washington state department of ecology region in which they are proposed, and where a public easement is given by the landowner;

- (c) Implementation of best management practices in the riparian zone on private property consisting of revegetation or fence construction and where a public easement is given by the landowner;
- (d) Implementation of best management practices on public property;
- (e) Computer equipment specific to funded project and identified in a funding agreement;
- (f) Annual meeting or conference registration fees where attendee is making a formal presentation related to the project;
- (g) Watershed plan development and implementation;
- (h) Diagnostic studies to assess current water quality;
- (i) Water quality education and stewardship programs;
- (j) Environmental checklists, assessments, and impact statements necessary to satisfy requirements for the State Environmental Policy Act (SEPA) and the National Environmental Policy Act (NEPA);
- (k) Equipment and/or tools for activities projects as identified in a funding agreement;
- (l) Farm planning;
- (m) Ground water protection activities and programs;
- (n) Riparian and wetlands habitat restoration and enhancement, including revegetation;
- (o) Indirect costs at a rate of up to twenty-five percent of salaries and benefits, or as defined in the most current edition of *Administrative Requirements for Ecology Grants and Loans*;
- (p) Lake implementation projects and water quality planning activities on lakes with public access;
- (q) Landscaping for erosion control directly related to a project, or site-specific landscaping in order to mitigate site conditions and comply with requirements in the State Environmental Policy Act or the National Environmental Policy Act;
- (r) Monitoring effectiveness;
- (s) Monitoring equipment used in a funded project for water quality assessment;
- (t) Volunteer monitoring programs;
- (u) Monitoring water quality;
- (v) Costs associated with the establishment of an area-wide program for ongoing maintenance of on-site wastewater systems;
- (w) On-site wastewater system surveys;
- (x) Development and dissemination of model ordinances to prevent or reduce pollution from nonpoint sources;
- (y) Public participation and public awareness directly related to the project;
- (z) Light refreshments for advisory group meetings when specified in loan or grant agreement;
- (aa) Sales tax;
- (bb) Sediment reduction practices and projects;
- (cc) Stream restoration projects or other bioengineering for water quality purposes;
- (dd) Total maximum daily load study development and implementation;
- (ee) Training recipient staff to develop skills specific and necessary to the funded project and where the training is identified in the loan or grant agreement;
- (ff) User charge system development; wastewater or storm water utility rate studies;
- (gg) Comprehensive basin, watershed, and area-wide water quality planning;
- (hh) Implementation of eligible projects identified in watershed plans;
- (ii) Wellhead protection.

**WAC 173-95A-070 How does the Growth Management Act impact the use of funds?**

(1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except that, in limited circumstances, a local government that is not in compliance with the Growth Management Act may receive loans or grants from the department where necessary to address a public health need or substantial environmental degradation.

(2) For the purposes of this chapter, "compliance with the Growth Management Act" means that:

(a) A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan and development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan and development regulations be adopted; and

(b) The county, city, or town has not been found out of compliance by a growth management hearings board; or

(c) A growth management hearings board has found a county, city, or town in compliance with the requirements of chapter 36.70A RCW, after previously finding the county, city, or town was not in compliance.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director of the department or his or her designee and addressed to the public official who signed the loan or grant application. "Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

#### **WAC 173-95A-080 What is the "step process" for planning facilities and activities projects?**

(1) The step process: The "step process" is a systematic method for proceeding with projects. The step process begins with site-specific planning, and continues through design to construction or implementation. It is

required for facilities construction projects and, in a modified form, is required for some kinds of activities projects and recommended for all kinds of activities projects.

(2) The step process for facilities: To be eligible for a centennial loan or grant, facilities projects must follow the step process.

(a) Before a public body with a facilities project is eligible to apply for funds, all previous steps must be approved by the department in order to help ensure that funds are spent in a timely matter on projects proceeding towards a successful outcome. Funding for site-specific facilities planning (step one) or design (step two) does not guarantee the awarding of future loans or grants for construction (step three). The department will not sign a loan or grant agreement until all previous steps have been completed and approved by the department.

(b) Planning (step one): Step one involves the preparation of a site-specific facilities plan that identifies and prioritizes the cost-effective alternatives for addressing a water pollution control problem with or without state and federal funding. There is no prerequisite for planning. If there is an existing engineering report, prepared with or without department funding, it must be upgraded for centennial loan or grant eligibility if it does not meet the definition of a facilities plan.

(c) Design (step two): Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan. Facilities plans must be approved by the department before an application for design can be considered for funding, regardless of whether or not the facilities planning documents were funded by a department grant or loan.

(i) Due to specific loan and grant review criteria, facilities plans approved by the department for purposes other than securing a loan or grant will not be accepted for design purposes.

(ii) Facilities plans approved by the department more than two years prior to the close of the loan and grant application period must contain evidence of recent review by the department to ensure the document reflects current conditions.

(d) Construction (step three): Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(e) Design and construction (step four): In some cases, design and construction may be combined into one loan award, which is called step four. Different ceiling amounts apply to step four projects, as provided for in WAC 173-95A-030. Applications for step four loans will be accepted and considered for funding if it can be demonstrated that step two (design) can be completed and approved by the department within one year of the date the final offer list is made public.

(3) Prerequisite documents for facilities projects: Draft documents must be sent to the department's engineers at least sixty days prior to end of application cycle for approval by end of application cycle.

(4) Step deviations. A deviation from the step process may be allowed only in a situation where the Washington State department of health has declared a public health emergency and the proposed project would remedy this situation.

(a) In this situation, the department will accept applications for funding consideration that do not follow the step process. However, no loan or grant agreement will be signed until all previous steps have been completed and approved by the department. This deviation from the step process will only allow an application to be considered for funding - it does not guarantee that funding will be offered. It does not allow a loan to be awarded until all step requirements have been satisfied.

(b) If a deviation is approved, the applicant may deviate by only one step. For instance, the department could accept an application for design if planning was not completed and approved, or an application for construction if design was not completed and approved. However, the department may not accept an application for construction if planning was not completed and approved, which would be a two step deviation.

(5) The step process for activities.

(a) Two kinds of activities projects must follow the step process:

(i) Best management practices; and

(ii) Lake projects.



(b) In other cases, the step process for activities is not required, however the department encourages all applicants to plan activities.

(c) The steps involved in the step process for activities are:

(i) Planning (step one) involves the identification of problems and evaluation of cost-effective alternatives, based on environmental and economic considerations, for correcting and preventing water quality problems. Specific activities may include planning for watershed management, ground water management areas, lake restoration, and water quality assessment and other related activities. If the planning document is one that must be approved by a government agency or public body other than the applicant, it must be signed before the applicant is eligible to apply for step two funding.

(ii) Implementation (step two) includes the actual implementation of the project based on the planning document. Where the project includes any type of construction, a design element may be included in step two.

#### **WAC 173-95A-090 What other laws, regulations or requirements must recipients comply with?**

(1) Recipients shall fully comply with all federal, state, and local laws and regulations related to procurement, discrimination, labor, job safety, and drug-free environments. The recipient shall also comply with the state and federal minority-and-women-owned business regulations. Applications must not be inconsistent with pertinent adopted water quality plans.

(2) If a loan or grant is provided for water pollution control facilities, recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project, phase, or segment completion.

(3) Recipients must maintain accounting records in accordance with "generally accepted government accounting standards." These standards are defined as, but not limited to, those contained in the United States General Accounting Office publication *"Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."*

(4) Accounting irregularities may result in an immediate stoppage of payment until irregularities are resolved. The director of the department may require immediate repayment of misused loan or grant funds.

#### **WAC 173-95A-100 How are grants and loans managed?**

(1) Timely use of funds: Projects funded with loans or grants from the centennial fund must be spent in a timely fashion so that funds are put to work for the water quality of the state as soon as possible. To accomplish this, certain time restrictions are placed on the use of funds as follows:

(a) Work on a project must be started within sixteen months of the publication date of the final offer list on which the project was proposed.

(i) Any expenditure of funds which is eligible for reimbursement under the terms of the loan or grant agreement constitutes starting the project.

(ii) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension and when the extension is included in the signed funding agreement with the department.

(iii) Valid reasons for a time extension allowing a start date more than sixteen months after the publication date of the final offer list are limited to:

(A) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.

(iv) If the funding recipient has one of these valid reasons to wait longer than sixteen months to start the project, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed loan or grant agreement.

(b) Work on a project must be completed within five years of the publication date of the final offer list on which the project was proposed or within a shorter time period if the shorter period is identified in the funding agreement for the project. When all work identified in the funding agreement scope of work is finished,

the project is deemed to be completed. After the five-year time limit is reached, no further expenditures may be reimbursed unless an extension is made.

(i) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension; and

(A) The extension is requested no less than three months before the funding agreement is due to expire; and

(B) The department's water quality program manager agrees that the extension is for a valid reason.

(ii) Valid reasons for a time extension are limited to:

(A) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.

(iii) If the funding recipient has one of these valid reasons to be allowed a time extension, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed amendment to the existing loan or grant agreement.

(c) In-kind goods and services may be used as match for activities grants subject to ceiling amount restrictions covered in WAC 173-95A-030 and subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*.

(d) In-kind goods and services may be used as match for facilities grants only in the case of projects undertaken under the small town environmental program, or "STEP."

(2) Prior authorization to incur costs. In cases where a project has been identified on a final offer list, the applicant may make a written request to the water quality program manager, asking to begin incurring costs related to a loan or grant for which there is not yet a signed loan or grant agreement. If the department concurs with this request, the water quality program manager will send the applicant a letter authorizing the costs. The applicant incurs the costs at their own risk. When an agreement is signed, previously incurred costs that are not eligible under the terms of the agreement are the sole responsibility of the applicant.

(3) Appeals of loan and grant agreement decisions: The only decisions which may be appealed are written decisions by the department made during the effective loan or grant agreement period. Appeals must be filed in writing to the department within forty-five days from the date of the disputed decision. Following the final decision of a dispute, the department and the recipient shall proceed with the project in accordance with the decision rendered. Administrative or legal costs and other expenses incurred as part of an appeal will not be eligible for reimbursement.

(4) The department, or at the department's discretion another authorized auditor, may audit the loan or grant agreement and records.

(5) The administration of all loans and grants will be subject to all terms and conditions in a funding agreement signed by the department and by the recipient.

(6) Ongoing management of most aspects of loan and grant projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*, copies of which will be provided to all recipients.

#### **WAC 173-95A-110 General provisions.**

(1) Other state and federal grant funding: Other grant funds provided by the state legislature, federal government, or from other sources will be managed in a manner consistent with the centennial rule.

(2) For all projects, the recipient must acknowledge department financial assistance in all reports, technical documents, publications, brochures, and other materials produced using funding from the loan or grant. All site-specific projects must have a sign of sufficient size to be seen from nearby roadways, acknowledging department financial assistance, and left in place throughout the life of the project. Department logos must be on all signs and documents. Logos will be provided as needed.

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• Chapter 173.95A WAC, *Uses and Limitations of Centennial Clean Water Funds*

• Chapter 173.95A WAC, *Uses and Limitations of Centennial Clean Water Funds*

## **Chapter 173.98 WAC, Uses and Limitations of the Water Pollution Control Revolving Fund**

### **Sections:**

<b>WAC 173-98-010</b>	<b>What is the purpose of this chapter?</b>
<b>WAC 173-98-020</b>	<b>What are the definitions of key terms?</b>
<b>WAC 173-98-030</b>	<b>How, and under what conditions, can money from the state water pollution control revolving fund be used?</b>
<b>WAC 173-98-040</b>	<b>Where can I obtain more detail about the application, review, and issuance processes for funds from the state water pollution control revolving fund?</b>
<b>WAC 173-98-050</b>	<b>What are the limitations on the use of funds and how are the funds categorized?</b>
<b>WAC 173-98-060</b>	<b>What is the step process for planning facilities and activities projects?</b>
<b>WAC 173-98-075</b>	<b>How does the Growth Management Act impact the use of funds?</b>
<b>WAC 173-98-080</b>	<b>Indemnification.</b>
<b>WAC 173-98-090</b>	<b>How are loans managed?</b>
<b>WAC 173-98-100</b>	<b>How do recipients comply with the state environmental review process?</b>
<b>WAC 173-98-110</b>	<b>What are the repayment options and schedules?</b>
<b>WAC 173-98-120</b>	<b>General provisions.</b>

### **WAC 173-98-01 What is the purpose of this chapter?**

The purpose of this chapter is to set forth limitations on the allocation and uses of moneys administered by the department of ecology from a special fund within the state treasury known as the state water pollution control revolving fund (SRF), as authorized by chapter 90.50A RCW. This fund provides financial assistance to applicants throughout the state of Washington who need such assistance to meet high priority water quality management needs.

### **WAC 173-98-020 What are the definitions of key terms?**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Act" means the Federal Water Pollution Control Act (33 U.S.C. 4661 et seq.).

(2) "Applicant" means a public body that has applied for funding.

(3) "Best management practices" means physical, structural, and/or managerial practices approved by the department or by another agency with regulatory oversight that, when used singularly or in combination, prevent or reduce pollutant discharges.

(4) "Concentrated animal feeding operation" means an animal livestock feeding operation that discharges animal waste to the waters of Washington state more frequently than the twenty-five year, twenty-four hour storm event; or if the operation is under a department administrative order, notice of violation, a National Pollution Discharge Elimination System permit; or the operation will be required to have a National Pollution Discharge Elimination System permit coverage in the near future; or the department or the U. S. Environmental Protection Agency determines the operation is considered to be polluting the waters of Washington state.

(5) "Commercial, industrial, and institutional flows" means the portion of the total flows to a facilities project that originate from commercial establishments, industrial facilities, or institutional sources such as schools, hospitals, and prisons.

(6) "Construction" means the erection, installation, expansion, or improvement of water pollution control facilities or activities.

(7) "Cost-effective alternative" means that alternative with the lowest present worth or equivalent annual value that achieves the requirements of the project while recognizing the environmental and other nonmonetary considerations.

(8) "Defeasance" means the setting aside in escrow or other special fund or account of sufficient investments and money dedicated to pay all principal of and interest on all or a portion of an obligation as it comes due.

(9) "Department" means the Washington state department of ecology.

(10) "Design" means the plans and specifications for water pollution control facilities or activities.

(11) "Director" means the director of the Washington State department of ecology or his or her authorized designee.

(12) "Easement," for the purposes of this rule, means a written agreement between a public body and an individual landowner, that allows the public body to have access to the property at any time to inspect, maintain, or repair activities or facilities installed with a loan or a grant, or to hold occasional public tours of the site for educational purposes.

(13) "The effective date of the loan agreement" means the date the loan agreement is signed by the department's water quality program manager.

(14) "Enforcement order" means an administrative order that is a document issued by the department under the authority of RCW 90.48.120 and that directs a public body to complete a specified course of action within an explicit period of time to achieve compliance with the provisions of chapter 90.48 RCW.

(15) "Engineering report" means a report that evaluates engineering and other alternatives that meet the requirements set forth in Chapter 173-240 WAC, Submission of plans and reports for construction of wastewater facilities.

(16) "EPA" means the United States Environmental Protection Agency.

(17) "Excess capacity" means water pollution control facilities capability beyond what is needed for the existing residential population to meet the water quality based effluent limitations in the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(18) "Existing residential need" means work required on the water quality based effluent limitations in the recipient's water pollution control facilities for the existing residential population in order to meet the recipient's National Pollution Discharge Elimination System or state waste discharge permit.

(19) "Facilities plan" means plans and studies necessary for treatment works to comply with enforceable requirements of the act and with state statutes. Facilities plans must include a systematic evaluation of alternatives that are feasible in light of the unique demographic, environmental or ecological, topographic, hydrologic and institutional characteristics of the area. Facilities plans must also demonstrate that the selected alternative is cost-effective.

(20) "Federal capitalization grant" means a federal grant awarded by EPA to the state as seed money to help establish the state water pollution control revolving fund.

(21) "Financial assistance" means each of the four types of assistance specified in WAC 173-98-030 (1)(b) through (f) and other assistance authorized by Title VI of the act and chapter 90.50A RCW.

(22) "Funding cycle" means the annual cycle of activities related to allocating funds for a single fiscal year.

(23) "Fund" means the state water pollution control revolving fund.

(24) "General obligation debt" means an obligation of the recipient secured by annual ad valorem taxes levied by the recipient and by the full faith, credit, and resources of the recipient.

(25) "Initiation of operation" means the actual date the water pollution control facilities initiates operation and the entity begins using the facilities for its intended purpose. This date may occur prior to final inspection and will be determined by the department after consultation with the recipient. This date may be the same or earlier than the date of project completion.

(26) "Infiltration and inflow" means water, other than wastewater, that enters a sewer system.

(27) "Infiltration and inflow correction" means the cost-effective alternative or alternatives identified in an approved facility plan for eliminating or reducing the infiltration and inflow from an existing sewer system.

(28) "Intended use plan (IUP)" means a plan identifying the intended uses by the department of the amount of funds available for financial assistance from the state water pollution control revolving fund (SRF)

for that fiscal year as described in section 606(c) of the act. The projects on the intended use plan will be ranked by environmental and financial need.

(29) "Loan agreement" means a legal contract between a recipient and the state, enforceable under state law, and specifying the terms and schedules under which assistance is provided.

(30) "Loan default" means failure to make a loan repayment within sixty days after the payment was due.

(31) "Local prioritization process" means a process to prioritize projects locally.

(32) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to:

(a) Atmospheric deposition, surface water runoff from agricultural lands, urban areas, forest lands, subsurface or underground sources; and

(b) Discharges from boats or other marine vessels.

(33) "Plans and specifications" means the construction contract documents and supporting engineering documents prepared in sufficient detail to allow contractors to bid on and construct water pollution control facilities. "Plans and specifications" and "design" may be used interchangeably.

(34) "Project" means the scope of work for which financial assistance is issued.

(35) "Project completion" means the date the project is determined by the department as being complete.

(36) "Public body" means the state of Washington or any agency, county, city or town, other political subdivision, municipal corporation or quasi-municipal corporation, and those Indian tribes recognized as such by the federal government at the time the SRF loan agreement is signed.

(37) "Public health emergency" means a situation declared by the Washington State department of health in which illness or exposure known to cause illness is occurring or is imminent.

(38) "Recipient" means an applicant for financial assistance which has signed an SRF loan agreement.

(39) "Reserve account" means, for a loan that constitutes revenue-secured debt, the account of that name created in the loan fund to secure the payment of the principal and interest on the loan.

(40) "Revenue-secured debt" means an obligation of the recipient secured by a pledge of the revenue of a utility and one not of a general obligation of the recipient.

(41) "Scope of work" means a detailed description of a project, including measurable objectives useful for determining successful completion. The scope of work is negotiated between the department and the loan or grant recipient.

(42) "Senior lien obligations" means all revenue bonds and other obligations of the recipient outstanding on the date of execution of this agreement (or subsequently issued on a parity therewith, including refunding obligations) or issued after the date of execution of this agreement having a claim or lien on the gross revenue of the utility prior and superior to the claim or lien of the loan, subject only to maintenance and operation expense.

(43) "Severe public health hazard" means a situation declared by the state department of health and the department in which the potential for illness exists, even if the illness is not currently occurring or imminent. For the purposes of this chapter there must be contamination of drinking water or contamination must be present on the surface of the ground in such quantities and locations to create a potential for public contact. The problem must generally involve a serviceable area including, but not limited to, a subdivision, town, city, or county. Also, the problem must be one which cannot be corrected through more efficient operation and maintenance of the wastewater disposal system(s).

(44) "Sewer" means a pipe and related pump stations located on public property, or on public rights of way and easements, that conveys wastewater from individual buildings or groups of buildings to a treatment plant.

(45) "Side sewer" means a sanitary sewer service extension from the point five feet outside the building foundation to the publicly owned collection sewer.

(46) "Small flows" means flows from commercial, industrial, or institutional sources that enter a sanitary sewer system.

(47) "State water pollution control revolving fund (SRF)" means the water pollution control revolving fund established by RCW 90.50A.020.

(48) "Step process" means a systematic process that facility projects must follow to be eligible for loans or grants.

(49) "Total eligible project cost" means the sum of all costs associated with a water quality project that have been determined to be eligible for loan or grant funding.

(50) "Total project cost" means the sum of all eligible and ineligible costs associated with a water quality project.

(51) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including, but not limited to, change in:

- (a) Temperature;
- (b) Taste;
- (c) Color;
- (d) Turbidity; or
- (e) Odor.

It also means a discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state that will or is likely to create a nuisance or render those waters harmful, detrimental, or injurious to the public health, safety, or welfare, or injurious to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(52) "Water pollution control activities" means actions taken by a public body to achieve the following purposes:

- (a) To control nonpoint sources of water pollution;
- (b) To develop and implement a comprehensive conservation and management plan for estuaries; and
- (c) To maintain, improve, or protect water quality through the use of water pollution control facilities, management programs, or other means.

(53) "Water pollution control facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater. Wastewater includes, but is not limited to, sanitary sewage, storm water, combined sewer overflows, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property integral to the treatment process, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include facilities, equipment, and collection systems which are necessary to protect federally designated sole source aquifers.

(54) "Water resource inventory areas," sometimes referred to as "WRIAs," means one of sixty-two watersheds in the state of Washington, each composed of the drainage areas of a stream or streams, as established in chapter 173-500 WAC as it existed on January 1, 1997. All parts of the state of Washington are located in a single water resource inventory area.

### **WAC 173-98-030 How, and under what conditions, can money from the state water pollution control revolving fund be used?**

(1) Uses of the money. The state water pollution control revolving fund (SRF) may be used for the following purposes:

(a) To accept and retain funds from capitalization grants provided by the federal government, state matching funds appropriated in accordance with chapter 90.50A RCW, payments of principal and interest, and any other funds earned or deposited;

(b) To make loans to applicants in order to finance the planning, design, and/or the construction of water pollution control facilities, make loans to applicants for the implementation of nonpoint source pollution control management programs (which includes planning and implementing elements of the nonpoint source pollution assessment and management program), and make loans to applicants for the development and implementation of a comprehensive estuary conservation and management plan, subject to the requirements of the act;

(c) To provide loans for up to twenty years reserve capacity for water pollution control facilities;

(d) To buy or refinance the debt obligations incurred by applicants after March 7, 1985, for the construction of water pollution control facilities. (March 7, 1985, was the date that the amendments adding Title VI to the act were first considered by Congress. Any refinancing agreements must be for construction initiated after that date according to federal and state law);

(e) To guarantee or purchase insurance for local obligations where such an action would improve credit market access or reduce interest rates;

(f) As a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state, if the proceeds of those bonds will be deposited in the fund; and

(g) To finance the reasonable costs incurred by the department in the administration of the account as authorized by the act and chapter 90.50A RCW.

(2) Policies for establishing the terms of financial assistance. Recipients' interest rates will be based on the average market interest rate. The average market interest rate will be based on the daily market rate published in the *Bond Buyer's Index* for tax exempt municipal bonds for the period from sixty to thirty days before the SRF annual funding application cycle begins, using the daily market interest rate for that period.

Loan terms and interest rates are as follows:

Repayment Period		Interest Rate
Up to five years:		Thirty percent of the average market rate.
More than 5 but no more than 20 years:		Sixty percent of the average market rate.

The director of the department of ecology or the director's designee may approve lower interest rates for the annual funding application cycle if a financial analysis of the fund demonstrates that lower interest rates for that year are not detrimental to the perpetuity of the fund.

(3) Financial hardship assistance for facilities construction.

(a) Financial hardship assistance may be available to loan recipients for the existing residential need portion of a water pollution control facilities construction project if the project will cause a residential sewer user charge in excess of one and one-half percent of the median household income.

(i) Median household income for this purpose is based on the most recent available census data, updated yearly based on inflation rates as measured by the Federal Bureau of Labor Statistics and published as the Consumer Price Index.

(ii) If median household income data are not available for a community or if the community disputes the data used by the department, the department will allow a local government to conduct a scientific survey to determine the median household income.

(iii) In situations where a project is proposed for an area with demographics which may not be representative of the entire census designated place, the department may require a scientific survey to determine the median household income.

(iv) In rare cases where financial hardship cannot be established using residential user fees as a percent of median household income financial hardship determinations will be made on a case-by-case basis.

(b) The need for hardship assistance is calculated on water pollution control facilities construction costs associated with existing residential need at the time an application for funding is received by the department. The analysis does not include costs for growth. For example, if an applicant applies for ten million dollars to finance facilities construction costs, where six million dollars is for existing residential need and the remaining four million dollars is for growth, the hardship analysis would be based on the six million dollars for existing residential need.

(c) If the department determines that financial hardship exists, it may make changes to the offer of financial assistance in an attempt to lower the residential user charges below the financial hardship level for the existing residential need. These changes may include:

(i) Changing the structure of the loan agreements with terms to lengthen the repayment period to a maximum of twenty years, lowering the interest rate, or a combination of a lower interest rate and an extended term; and, if this is not sufficient,

(ii) Offering partial centennial grant funding as allowable under the provisions of chapter 173-95A WAC.

(d) If an applicant is requesting financial hardship assistance, it should submit a completed financial hardship analysis form with its application for financial assistance.

**WAC 173-98-040 Where can I obtain more detail about the application, review, and issuance processes for funds from the state water pollution control revolving fund?**

(1) Applicants must apply for financial assistance in order to be considered for funding and for their projects to be included on the intended use plan. Projects must be on a current or past intended use plan in order to receive SRF loans.

(a) A schedule of the annual funding cycle will be published no later than the last business day of November each year, for the funding corresponding to the next state fiscal year.

(b) The period during which applications are accepted each year will last a minimum of sixty days, and application forms and guidelines for that year will be made available at the beginning of that period.

(c) In the first thirty days of the period during which applications are accepted each year, the department will conduct at least one application workshop in each of the department's four regions.

(d) When there is limited demand for funds from the current funding cycle, projects from any past intended use plan, starting with the most recent, may be funded in priority order, where:

(i) Cost overruns to a funded project are shown to be justifiable; or

(ii) Final cost reconciliation shows that higher costs are reasonable; or

(iii) The applicant received partial funding for the project and the change is shown on a current intended use plan.

(2) The application for funding will consist of two parts. Part one of the application will request information for identification, description, and other information about the project for tracking purposes, and part two of the application will request information about the water quality problem or problems being addressed by the project and the proposed solutions to the problems. In the application, applicants will be asked to fully describe the environmental and financial need for the project. Applications for SRF financial assistance for facilities projects must address problems such as public health emergencies, severe public health hazards, the need to provide secondary or advanced treatment, the need to improve and protect water quality, reduction of combined sewer overflows, and other environmental needs. Applications for SRF financial assistance for nonpoint projects must implement the remedies and prevention of water quality degradation associated with nonpoint source water pollution and must not be inconsistent with needs identified in the department's approved nonpoint source pollution management plan.

(3) The application form, part two, will include five main question areas, each with subsidiary questions designed to elicit the information needed to evaluate the project. The maximum points awarded for these question areas equal ninety percent of the total possible score with a maximum of ten percent coming from the local prioritization. The five main question areas and their associated maximum point percentages are:

(a) "What is the overall water quality problem and how will the problem be solved or addressed by the project?" This question is intended for general background purposes and to give evaluators an overview of the proposed project; no points are assigned.

(b) "What are the specific public health and water quality impairments caused by the problem and what are the pollution prevention aspects?" This question area is worth a maximum of thirty-four percent of the total score.



(c) "How will your proposed project address the water quality problem, and what are your measures of success?" This question area is worth a maximum of thirty-four percent of the total score.

(d) "What are some of the local initiatives you have taken that will help make your project a success?" This question area is worth a maximum of twelve percent of the total score.

(e) "Are there any state of Washington or federal mandates that this proposed project addresses?" This question area is worth a maximum of ten percent of the total score.

(f) "Local prioritization process." This question area is worth a maximum of ten percent of the total score. The local prioritization process is described in detail in WAC 173-95A-050.

(4) The department will evaluate the proposed projects based on the information contained in the applications.

(a) Projects will be ranked according to potential water quality benefit and protection of public health.

(b) Projects which have the highest environmental and public health need will be given priority for financial assistance under the SRF program.

(c) Because funds must be used in a timely manner, readiness to proceed is also used in establishing the priority of projects.

(d) Other factors, including funding provisions in chapter 90.50A RCW and provisos identified in the department's biennial capital budget, relationship to the department's published plans such as the *Water Quality Management Plan to Control Nonpoint Sources of Pollution* and total maximum daily load studies, and relationship to published plans created by other federal and state agencies will be included in the priority evaluation.

(e) The department will request other agencies to provide evaluation assistance as needed, including but not limited to, the Washington state conservation commission, the Puget Sound action team, and the Washington state department of health.

(f) The department will coordinate maximum funding amounts and other issues with other state and federal funding agencies when possible.

(5) The total score that each proposed project receives based on the application form, part two, will be added to the local prioritization score (see WAC 173-95A-050 for more information on the local priority-setting process) to develop the final score for the proposed project.

(6) The department will prepare a draft intended use plan each year after evaluating all applications. The draft intended use plan will list projects in rank order starting with the project receiving the most points in its final score. This will also generally be the order that projects may be offered financial assistance. After issuing the draft intended use plan the department will allow a minimum of thirty days for public review and comment on the draft intended use plan. No later than fifteen days before the end of the public review and comment period the department will conduct at least one workshop to explain the draft intended use plan, answer questions about the draft intended use plan and the evaluation process, and provide details on the public comment process.

(7) The final intended use plan will be issued no later than sixty days after the end of the public review and comment period. The final intended use plan will reflect any changes made as a result of public comments or other information received during the public review and comment period, and will include a responsiveness summary. The final intended use plan will generally list projects in the order that projects may be offered financial assistance.

#### **WAC 173-98-050 What are the limitations on the use of funds and how are the funds categorized?**

(1) The fund may be used to provide financial assistance to applicants for the construction of water pollution control facilities which are identified in the intended use plan and activities eligible for assistance under sections 319 and 320 of the act.

(2) Unless the demand for funding is limited SRF loan agreements are subject to the following funding category limitations:

(a) Water pollution control facilities category: Not more than eighty percent of the fund will be available for the construction of facilities as established under section 212 of the act and subject to the requirements of that act. Those projects will be under the water pollution control facilities category.

(b) Nonpoint source and comprehensive estuary conservation and management category: Not more than twenty percent of the fund will be available for the implementation of programs or projects established under the department's approved nonpoint source pollution management plan established under section 319 of the act, and intended for the management of nonpoint sources of pollution, and subject to the requirements of that act, or for programs or projects established under a comprehensive conservation and management plan under section 320 of the act relating to the National Estuary Program, and subject to the requirements of that act. Those projects will be under the nonpoint source and comprehensive estuary conservation and management category.

(c) Not more than fifty percent of the fund in each category will be available to any one applicant.

(3) In accordance with federal law, loan offers identified on the final intended use plan will be effective for up to one year from the date of the offer. All SRF loan offers that do not result in a signed SRF loan agreement within the effective offer period are automatically terminated. Funds reserved for SRF loan agreements that are not signed within the effective period may be carried over and made available for the next year's funding cycle.

(4) The fund may not be used for activities primarily directed toward water resources or water pollution control activities or facilities or portions of those facilities that are primarily intended to control, transport, treat, dispose, or otherwise manage commercial, institutional, or industrial wastewater or other water pollution control needs from those sites. Costs associated with commercial, institutional, or industrial pretreatment are not eligible for funding. However, commercial, institutional, or industrial wastewater flows attributable to a public body's water pollution control facilities which are determined by the department to be "small" may be allowed. Flows from individual commercial, industrial, or institutional sources are considered small when they are less than five percent of the total existing needs, as identified by the department's engineers. Collectively, flows from all individual commercial, industrial, or institutional sources are considered small when they are less than thirty percent of the total existing needs, as identified by the department's engineers.

(5) The fund may not be used to make direct loans to applicants to support the nonfederal share of eligible portions of projects receiving assistance under Title II of the act. The fund may be used to finance portions of such projects which were determined to be ineligible for federal assistance but which are eligible under the SRF program.

(6) Noneligible project costs include, but are not limited to, the following:

(a) Acts of nature: Projects related to acts of nature that alter the natural environment, thereby causing water quality problems;

(b) Aquatic plant control for aesthetic reasons, navigational improvements, or other purposes unrelated to water quality;

(c) Concentrated animal feeding operations except those located in the federally designated Puget Sound and lower Columbia River estuaries;

(d) Engineering reports;

(e) Facilities that propose to meet or maintain primary treatment of domestic sewage;

(f) Flood control: Projects primarily designed to provide flood control;

(g) Water pollution control activities or facilities or portions of those facilities that are primarily intended to control, transport, treat, dispose, or otherwise manage commercial, institutional or industrial wastewater or other water pollution control needs from those sites;

(h) Lake implementation projects where there is no public access;

(i) Permit fees;

(j) Costs associated with commercial, institutional or industrial pretreatment;

(k) Professional dues;

(l) Reclamation of abandoned mines;

(m) Projects proposed by Washington state agencies or federal agencies will not be funded; except that activities projects undertaken by state institutions of higher education are eligible to apply for funding when the activities are not part of the school's statutory responsibilities.

(n) Scientific research unrelated to a specific project;

(o) Sewers: Side sewer laterals or individual pump stations on private residential property, or other appurtenances where the facilities are not owned and maintained by a public body;

(p) Solid and hazardous waste facilities;

(q) Storm water activities and facilities associated exclusively with flood control;

(r) Projects or project elements solely addressing water quantity or other water resource issues.

(7) Noneligible project component costs include, but are not limited to, the following:

(a) Bond costs for debt issuance;

(b) Employee training not related to or identified in an SRF loan agreement;

(c) Equipment required for site and building maintenance;

(d) Facilities components:

(i) Abandonment of existing structures;

(ii) Bonus or acceleration payments to contractors to meet contractual completion dates for construction;

(iii) Capacity in excess of twenty years;

(iv) Construction claims and associated costs determined to be nonmeritorious;

(v) Construction claims, meritorious, in excess of the maximum allowable loan amount;

(vi) Corrective action plans for the one-year performance certification program;

(vii) Cost-plus-a-percentage-of-cost contracts (also known as multiplier contracts);

(viii) Demolition of structures that are not interfering with proposed construction, replacement parts, other than those for an initial set of spare parts for equipment that is critical for facilities to operate in compliance with discharge permit requirements;

(e) Fines and penalties due to violations of or failures to comply with federal, state, or local laws;

(f) Interest on bonds, interim financing, and associated costs to finance projects;

(g) Lake implementation projects where there is no public access;

(h) Land acquisition for siting of wastewater treatment plants, sewer rights of way, and easements, and associated costs;

(i) Landscaping for aesthetic reasons;

(j) Legal expenses other than those associated with development of local ordinances for water quality protection and improvement or associated with the use of a bond counsel in developing a loan agreement;

(k) Lobbying or expenses associated with lobbying;

(l) Monitoring equipment used by an industry for sampling and analyzing industrial discharges to municipal water pollution control facilities;

(m) Office equipment;

(n) Operating expenses of local government, such as the salaries and expenses of a mayor, city council member, and/or city attorney;

(o) Overtime differential paid to employees of local government to complete administrative or force account work;

(p) Personal injury compensation or damages arising out of the project, whether determined by adjudication, arbitration, negotiation, or other means;

(q) Preparation of loan or grant applications;

(r) Previously funded objectives financed with an SRF loan;

(s) Rework costs;

(t) Routine or ongoing operation and maintenance costs;

(u) Seminar and conference fees not identified in an SRF loan agreement;

(v) Vehicle purchase or lease except those vehicles that are integral to a treatment process e.g., sludge truck.

### **WAC 173-98-060 What is the step process for planning facilities and activities projects?**

(1) The step process: The "step process" is a systematic method or proceeding with projects. The step process begins with site-specific planning, and continues through design to construction or implementation. It is required for facilities construction projects and, in a modified form, is required for some kinds of activities projects.

(2) The step process for facilities. To be eligible for an SRF loan, facilities projects must proceed according to the "step process."

(a) Before a public body with a facilities project is eligible to apply for funds, all previous steps must be approved by the department in order to help ensure that funds are well spent on projects proceeding towards a successful outcome. Funding for site-specific facilities planning (step one) or design (step two) does not guarantee the awarding of future loans for construction (step three). The loan agreement will not be signed until all previous steps have been completed and approved by the department.

(b) Planning (step one). Step one involves the preparation of a site-specific facilities plan that identifies and prioritizes the cost-effective alternatives for addressing a water pollution control problem with or without state and federal funding. There is no prerequisite for planning. If there is an existing engineering report, prepared with or without department funding, it must be upgraded for SRF eligibility if it does not meet the definition of a facilities plan.

(c) Design (step two). Step two includes the preparation of plans and specifications for use in construction. These must be based on the preferred cost-effective alternative identified in the facilities plan.

(i) Facilities plans must be approved by the department before an application for design can be considered for funding. Site-specific facilities planning documents not funded by a department grant or loan must also be approved by the department before an application for design can be considered.

(ii) Due to specific loan review criteria, a facilities plan approved by the department for purposes other than securing a loan will not be accepted for design purposes.

(iii) Facilities plans approved by the department more than two years prior to the close of the SRF application period must contain evidence of recent department review to ensure the document reflects current conditions.

(d) Construction (step three). Step three includes the actual building of facilities based on the approved design. Design must be approved by the department before an application for construction can be considered for funding.

(e) Design and construction (step four). In some cases, design and construction may be combined into one loan award. Applications for step four loans will be accepted and considered for funding if it can be demonstrated that step two design can be completed and approved by the department within one year of the date the final intended use plan is made public. The SRF loan share of the total eligible project under step four cannot exceed fifty percent of the amount available in the appropriate funding category, or one million dollars, whichever is less.

(f) Step compliance and step deviations. There is one situation in which a deviation from the step process can be allowed:

(i) If the Washington State department of health has declared a public health emergency and if the proposed project would remedy this situation.

(ii) In this situation, the department will accept applications for funding consideration that do not follow the step process. However, no loan agreement will be signed until all previous steps have been completed and approved by the department. This deviation from the step process will only allow an application to be considered for funding. It does not allow a loan to be awarded until all step requirements have been satisfied.

(iii) If a deviation is approved, the applicant may deviate by only one step. For instance, the department could accept an application for design if planning was not completed and approved, or an application for construction if design was not completed and approved. However, the department may not accept an application for construction if planning was not completed and approved.

(3) Prerequisite documents for facilities projects: Draft documents must be sent to the department's engineers at least sixty days prior to end of application cycle for approval by end of application cycle.

(4) The step process for activities. In most cases, the step process for activities is not required. However, those applications proposing to implement a specific project identified in a completed comprehensive plan are given additional consideration in the evaluation process. Agricultural best management practices that involve improvements on private property, or lake projects, must follow the step process.

(a) Planning (step one) involves the identification of problems and evaluation of cost-effective alternatives, based on environmental and economic considerations, for correcting and preventing water quality problems. Specific activities may include planning for watershed management, ground water management areas, lake restoration, and water quality assessment and other related activities.

(b) Implementation (step two) includes the actual implementation of the project based on the approved planning document.

**WAC 173-98-070 What other laws, regulations or requirements must recipients comply with?**

(1) (a) All recipients shall comply with all applicable federal, state, and local laws, orders, regulations, and permits. Applications must not be inconsistent with pertinent adopted water quality plans including, but not limited to, plans under sections 208, 303(e), 319, and 320 of the act.

(b) The Puget Sound water quality management plan constitutes the comprehensive conservation and management plan required in section 320 (b)(4) of the act. Plans must not be inconsistent with shoreline master programs, ground water management programs and stormwater plans, combined sewer overflow (CSO) reduction plans and county or city comprehensive sewer plans.

(c) In accordance with the SRF loan agreement, the applicant shall provide assurances that the necessary permits required by authorities having jurisdiction over the project have been secured. Copies must be available to the department upon request.

(2) Recipients shall fully comply with all federal, state, and local laws and regulations related to procurement, discrimination, labor, job safety, and drug-free environments. The recipient shall also comply with the state and federal minority-and-women-owned business regulations.

(3) If an SRF loan is provided for water pollution control facilities, recipients shall submit a declaration of construction of water pollution control facilities to the department within thirty days of project, phase, or segment completion.

(4) Recipients must maintain accounting records in accordance with “generally accepted government accounting standards.” These standards are defined as, but not limited to, those contained in the United States General Accounting Office (GAO) publication “Standards for Audit of Governmental Organizations, Programs, Activities, and Functions.” For example, charges must be properly supported, related to eligible costs, and documented by appropriate records. These accounts must be maintained as separate accounts.

(5) Accounting irregularities may result in an immediate stoppage of payment until irregularities are resolved. The director may require immediate repayment of misused loan funds.

(6) According to RCW 90.50A.060, in the event of loan default, the state of Washington may withhold any amounts otherwise due to the recipient from the state and direct that such moneys be applied to the indebtedness and deposited into the SRF.

(7) Appeals of SRF loan agreement decisions will be processed in accordance with the water quality financial assistance appeals procedure. The only decisions which can be appealed are written decisions by the department made during the effective SRF loan agreement period. Appeals must be filed in writing to the department within forty-five days from the date of the disputed decision. Following the final decision of a dispute, the department and the recipient shall proceed with the project in accordance with the decision rendered. Administrative or legal costs and other expenses incurred as part of an appeal will not be eligible for reimbursement.

(8) The department, or at the department's discretion another authorized auditor, will audit the SRF loan agreement and records.

(9) Recipients shall maintain comprehensive insurance coverage on the project for an amount equal to the funds disbursed.

**WAC 173-98-075 How does the Growth Management Act impact the use of funds?**

(1) A local government not in compliance with the Growth Management Act may not receive loans or grants from the department, except that, in limited circumstances, a local government that is not in compliance with the Growth Management Act may receive loans or grants from the department where necessary to address a public health need or substantial environmental degradation.

(2) For the purposes of this chapter, "compliance with the Growth Management Act" means that:

(a) A county, city, or town that is required to or chooses to plan under RCW 36.70A.040 has adopted a comprehensive plan and development regulations in conformance with the requirements of chapter 36.70A RCW, after it is required that the comprehensive plan and development regulations be adopted; and

(b) The county, city, or town has not been found out of compliance by a growth management hearings board; or

(c) A growth management hearings board has found a county, city, or town in compliance with the requirements of chapter 36.70A RCW, after previously finding the county, city, or town was not in compliance.

(3) For the purposes of this chapter, a public health need related to a loan or grant must be documented by a letter signed by the secretary of the Washington state department of health or his or her designee and addressed to the public official who signed the loan or grant application. "Public health need" means a situation where:

(a) There is a documented potential for:

(i) Contaminating a source of drinking water; or

(ii) Failure of existing wastewater system or systems resulting in contamination being present on the surface of the ground in such quantities and locations as to create a potential for public contact; or

(iii) Contamination of a commercial or recreational shellfish bed as to create a critical public health risk associated with consumption of the shellfish; or

(iv) Contamination of surface water so as to create a critical public health risk associated with recreational use; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(4) For the purposes of this chapter, a substantial environmental degradation related to a loan or grant must be documented by a letter signed by the director of the department or his or her designee and addressed to the public official who signed the loan or grant application.

"Substantial environmental degradation" means that:

(a) There is a situation causing real, documented, critical environmental contamination that:

(i) Contributes to violations of the state's water quality standards; or

(ii) Interferes with beneficial uses of the waters of the state; and

(b) The problem generally involves a serviceable area including, but not limited to, a subdivision, town, city, or county, or an area serviced by on-site sewage disposal systems; and

(c) The problem cannot be corrected through more efficient operation and maintenance of an existing wastewater disposal system or systems.

(5) A county, city, or town that has been offered a loan or grant for a water pollution control facilities project may not receive loan or grant funds while the county, city, or town is not in compliance with the Growth Management Act unless:

(a) Documentation showing that a public health need has been provided by the Washington state department of health; or documentation showing that a substantial environmental degradation exists has been provided by the department of ecology; and

(b) The county, city, or town has provided documentation to the department that actions or measures are being implemented to address the public health need or substantial environmental degradation; and

(c) The department has determined that the project is designed to address only the public health need or substantial environmental degradation described in the documentation, and does not address unrelated needs including, but not limited to, provisions for additional growth.

**WAC 173-98-080 Indemnification.**

(1) The department shall in no way be held responsible for payment of salaries, consultant's fees, and other overhead costs related to an SRF loan agreement issued to a recipient.

(2) To the extent that the Constitution and laws of the state of Washington permit, the recipient shall indemnify and hold the department harmless from and against any liability for any or all injuries to persons or property arising out of an SRF loan agreement except for such damage, claim, or liability resulting from the negligent act or omission of the department.

**WAC 173-98-090 How are loans managed?**

(1) Timely use of funds: Projects funded with loans must be spent in a timely fashion so that funds are put to work for the water quality of the state as soon as possible. To accomplish this, certain time restrictions are placed on the use of funds as follows:

(a) Work on a project must be started within sixteen months of the publication date of the final intended use plan on which the project was proposed.

(i) Any expenditure of funds which is eligible for reimbursement under the terms of the loan agreement constitutes starting the project.

(ii) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension and when the extension is included in the signed funding agreement with the department.

(iii) Valid reasons for a time extension allowing a start date more than sixteen months after the publication date of the final intended use plan are limited to:

(A) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.

(iv) If the funding recipient has one of these valid reasons to wait longer than sixteen months to start the project, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed loan agreement.

(b) Work on a project must be completed within five years of the publication date of the final intended use plan on which the project was proposed or within a shorter time period if the shorter period is identified in the funding agreement for the project. When all work identified in the funding agreement scope of work is finished, the project is deemed to be completed. After the five-year time limit is reached, no further expenditures may be reimbursed unless an extension is made.

(i) No more than one time extension of no more than twelve months may be made when there are valid reasons for the extension; and

(A) The extension is requested no less than three months before the funding agreement is due to expire; and

(B) The department's water quality program manager agrees that the extension is for a valid reason.

(ii) Valid reasons for a time extension are limited to:

(A) Schedules included in water quality permits, consent decrees, or enforcement orders; or

(B) The recipient and the department agree that there is a need to do work during an environmental window in a specific season of the year.

(iii) If the funding recipient has one of these valid reasons to be allowed a time extension, the reasons why it will take longer and the schedule the recipient will follow must both be stated clearly in a signed amendment to the existing loan agreement.

(2) Prior authorization to incur costs. In cases where a project has been identified on a final intended use plan, the applicant may make a written request to the water quality program manager, asking to begin

incurring costs related to a loan for which there is not yet a signed loan agreement. If the department concurs with this request, the water quality program manager will send the applicant a letter authorizing the costs. The applicant incurs the costs at their own risk. When an agreement is signed, previously incurred costs that are not eligible under the terms of the agreement are the sole responsibility of the applicant.

(3) The administration of all loans will be subject to all terms and conditions in a funding agreement signed by the department and by the recipient.

(4) Ongoing management of most aspects of loan projects is subject to the most recent edition of *Administrative Requirements for Ecology Grants and Loans*, copies of which will be provided to all recipients.

#### **WAC 173-98-100 How do recipients comply with the state environmental review process?**

(1) All recipients which receive SRF loans must meet the provisions of the State Environmental Policy Act (SEPA), chapter 43.21C RCW, and the SEPA rules, chapter 197-11 WAC. Additional provisions are currently needed by federal law under Title VI of the act to satisfy the state's responsibility to help ensure that recipients comply with the National Environmental Policy Act (NEPA) and other applicable environmental laws, regulations, and executive orders. The lead agency (WAC 197-11-050(2)) responsible for SEPA compliance for each project under the SRF program shall also comply with the following additional provisions. When a categorical exclusion, finding of no significant impact, or a record of decision has been issued under NEPA for the same project scope of work, no additional environmental documentation is required. Applicants will need to adopt the federal environmental documentation to meet their responsibilities as required by SEPA rules WAC 197-11-600, 197-11-610, and 197-11-630. If federal environmental documentation has not been submitted for approval to the appropriate federal agency, applicants and designated lead agencies must:

(a) Consult with the department before determining that the project is categorically exempt from SEPA and obtain concurrence that the project meets the criteria for a categorical exemption (WAC 197-11-305) and give public notice of the categorical exemption by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the facilities plan and other environmental information.

(b) Consult with the department prior to issuing a threshold determination (WAC 197-11-330), and submit a copy of the environmental checklist (WAC 197-11-315) and a recommended threshold determination to the department.

(c) Obtain written concurrence from the director with the recommended threshold determination as to whether a determination of nonsignificance (DNS) (WAC 197-11-340) or an environmental impact statement (EIS) is to be issued prior to issuing the actual document.

(d) Issue the threshold determination, determination of nonsignificance (DNS) or determination of significance (DS) (WAC 197-11-360) and submit copies to the department; two copies shall be sent to the department's environmental review section and one copy to the regional water quality program (WQ) of the department. The director must concur in writing with the findings of the checklist and DNS if a DNS is issued.

(e) Give public notice of the threshold determination by publishing a notice in a newspaper of area-wide circulation. This notice shall include the locations where the public may review the threshold determination, facilities plan, and other environmental information.

(f) Distribute copies of the threshold determination and supporting documents to other affected local, state, and federal agencies, Indian tribes, and the public.

(g) When a DS is issued, the lead agency will develop the final scope of elements to be addressed in the environmental impact statement (EIS) and obtain written concurrence from the director. The department shall be consulted throughout the EIS process.

(h) Distribute copies of the draft and the final EIS to the department; two copies shall be sent to both the environmental review section and the department's Water Quality program.

(i) Give public notice of the draft and final EIS by publishing notices in a newspaper of area-wide circulation. Notices shall include the locations where the public may review the draft and final EIS or obtain copies.



(j) Distribute copies of the draft and final EIS to other affected local, state, and federal agencies, Indian tribes, and the public.

(k) The director must concur in writing with the finding of the final EIS.

(2) The lead agency shall issue a notice of action for the final EIS regarding the preferred alternative in accordance with RCW 43.21C.080, WAC 197-11-680, and 197-11-990.

(3) A cost-effectiveness analysis will be required for all SRF projects. Planning must include a comparison of the total cost, i.e., capital, operation and maintenance, and replacement costs of the project with other alternatives, including the no action alternative, . The comparison of the total costs, e.g., total present worth or annual equivalent costs of projects for the planning period, must be included. Cost-effective analyses must also include nonmonetary cost of the project, i.e., the environmental impact, resource utilization, implementability, etc. This analysis must be included in the planning document and must be summarized in the EIS or DNS. Financial assistance under the SRF program will be offered to the most affordable cost-effective solution to the water pollution control problem.

(4) All mitigation measures committed to in the environmental checklist or state EIS, or in the finding of no significance impact/ environmental assessment or record of decision/ federal EIS (for federally approved projects) will become SRF loan agreement conditions. Applicants must complete all mitigation measures required. Failure to abide by these conditions will result in withholding of payments and may result in immediate repayment of the loan.

(5) The applicant must comply with the requirements of applicable environmental laws, regulations, and executive orders. Concurrence from the director will be based on best available information provided by the applicant. The department is not responsible for concurrence based on erroneous information.

#### **WAC 173-98-110 What are the repayment options and schedules?**

(1) General provisions.

When the scope of work identified in the SRF loan agreement has been fully completed and/or the initiation of operation date has been determined:

(a) The department and recipient will execute a final SRF loan agreement amendment which details the final loan amount. This amount will include the principal from disbursements made to recipients and accrued interest. Interest will accrue on each disbursement as it is paid to the recipient.

(b) The department will prepare according to the SRF loan agreement, a repayment schedule which fully amortize the final loan amount within twenty years of project completion. The first repayment of principal and interest will be due no later than one year after the initiation of operation date or at project completion date, whichever occurs first. Equal payments will be due every six months after this first payment. Loan balances may be repaid or additional principal payments may be made at any time without penalty.

(c) If any amount of the final loan amount or any other amounts owed to the department remains unpaid after it becomes due and payable, the department may assess a late charge. The late charge shall be additional interest at the rate of one percent per month, or fraction thereof, starting on the date the debt becomes past due and until it is paid in full.

(d) If the due date for any semiannual payment falls on a Saturday, Sunday, or designated holiday for Washington state agencies, the payment shall be due on the next business day for Washington state agencies.

(2) Phased or segmented project. Where a project has been phased or segmented, the general provisions for repayment shall apply to the completion of individual phases or segments.

(3) More than five years to complete project. When a project approved by the department takes longer than five years to complete, loan repayment must begin within five years of the first disbursement for the project, unless the director determines that the fund is fiscally sound without this repayment schedule. Repayments for these loans must follow the general provisions as outlined in subsection (1)(b) of this section.

(4) Security for loan repayment. Loans shall be secured by a general obligation pledge or a revenue pledge of the recipient. The obligation of the recipient to make loan repayments from the sources identified in its SRF loan agreement shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, or abatement of any kind.

(a) General obligation. When repayment of a loan is secured by a general obligation pledge, the recipient shall pledge for so long as the loan is outstanding, to include in its budget and levy taxes annually within the constitutional and statutory tax limitations provided by law without a vote of its electors, on all of the taxable property within its boundaries in an amount sufficient, together with other money legally available and to be used for loan repayment, to pay when due the principal of and interest on the loan, and the full faith, credit, and resources of the recipient shall be pledged irrevocably for the annual levy and collection of those taxes and the prompt payment of the principal of and interest on the loan.

(b) Revenue obligation. Repayment of a loan may be secured by an irrevocable pledge of the net revenues of the recipient's utility and, in appropriate cases, utility local improvement district assessments. In such cases:

(i) Lien position. Repayment of a loan shall constitute a lien and charge (A) upon the net revenues of the recipient's utility prior and superior to any other charges whatsoever, except that the lien and charge shall be junior and subordinate to the lien and charge of any senior lien obligations and, (B) if applicable, upon utility local improvement district assessments prior and superior to any other charges whatsoever.

(ii) Reserve requirement. For loans that are revenue-secured debt with terms greater than five years, the recipient must accumulate a reserve for the loan equivalent to at least the average annual debt service on the loan during the first five years of the repayment period of the loan. This amount shall be deposited in a reserve account in the loan fund in approximately equal annual payments commencing within one year after the initiation of operation or the project completion date, whichever comes first. "Reserve account" means, for a loan that constitutes revenue-secured debt, an account of that name created in the loan fund to secure the payment of the principal of and interest on the loan. The amount on deposit in the reserve account may be applied by the recipient (A) to make, in part or in full, the final repayment to the department of the loan amount or, (B) if not so applied, for any other lawful purpose of the recipient once the loan amount, plus interest and any other amounts owing to the department hereunder, have been paid in full.

(5) Repayment from other than pledged sources. A recipient may repay any portion of its loan from any legally available funds other than those pledged in its SRF loan agreement to repay the loan.

(6) No defeasance or advance refunding. So long as the department holds a loan, the recipient shall not be entitled to, and shall not effect, its economic defeasance or advance refunding.

#### **WAC 173-98-120 General provisions.**

(1) Sale of facilities to private enterprises. Recipients may sell facilities for which the SRF loan was provided to private enterprises; however, the SRF loan agreement must be terminated in accordance with the terms of the agreement and the assistance repaid to the SRF immediately upon sale.

(2) Refinancing. The refinancing of existing debt obligations shall be limited to water pollution control facilities where project construction began after March 7, 1985. Applicants requesting refinancing must meet all the requirements contained in the act. They must be on the intended use plan before assistance will be offered and must be eligible to receive such assistance. There are two kinds of refinance with different regulations:

(a) Interim refinance: Interim refinance refers to a project which is still in progress and for which the applicant went forward on their own accord and using funding from a source other than the department. For projects in this category, applicants for funding should apply in the same manner as any other project, making certain to clearly state that the project is underway and that they have secured all prerequisite documents.

(b) Standard refinance: Standard refinance refers to a project which has been completed using funding from a source other than the department.

(i) Standard refinance projects will only be funded if there is limited demand for funds for new projects.

(ii) The department will not refinance debt from funding programs administered by the department.

(iii) All project prerequisites must have been met at the time the project was undertaken.

(iv) All standard refinance projects applying for funding in a fiscal year will be ranked by financial capability using the same criteria used for evaluating hardship, and giving the highest ranking to the applicants with the greatest financial need.

(v) For standard refinance projects, applicants for funding may use a shorter, simpler application form. This form will ask basic questions about the project and about the applicant's financial capability to pay for the project with and without the refinance.

(vi) Successful applicants for standard refinance projects must make their first repayment six months after they sign a funding agreement.

(3) Self certification. The department may authorize a recipient to certify compliance with selected program requirements. The recipient must request such certification authority and document that it has the capability and resources, that it is in the best interest of the state, and that the request is consistent with state and federal laws and regulations. Concurrences required in the environmental review process cannot be delegated to recipients.

(4) For all projects, the recipient must acknowledge state and federal financial assistance in all reports, technical documents, publications, brochures, and other materials produced using funding from the loan or grant. All site-specific projects must have a sign of sufficient size to be seen from nearby roadways, acknowledging state and federal financial assistance, and left in place throughout the life of the project. Department and environmental protection agency logos must be on all signs and documents and will be provided as needed.

## **Federal Clean Water Act of 1987, Section 319**

CITE 33 USC Sec. 1329 01/24/94

### EXPCITE TITLE 33 - NAVIGATION AND NAVIGABLE WATERS CHAPTER 26 - WATER POLLUTION PREVENTION AND CONTROL SUBCHAPTER III - STANDARDS AND ENFORCEMENT

**HEAD** Sec. 1329. Nonpoint source management programs

#### **STATUTE**

- a. State assessment reports
  - 1. Contents - The Governor of each State shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval, a report which -
    - A. identifies those navigable waters within the State which, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of this chapter;
    - B. identifies those categories and subcategories of nonpoint sources or, where appropriate, particular nonpoint sources which add significant pollution to each portion of the navigable waters identified under subparagraph (A) in amounts which contribute to such portion not meeting such water quality standards or such goals and requirements;
    - C. describes the process, including intergovernmental coordination and public participation, for identifying best management practices and measures to control each category and subcategory of nonpoint sources and, where appropriate, particular nonpoint sources identified under subparagraph (B) and to reduce, to the maximum extent practicable, the level of pollution resulting from such category, subcategory, or source; and
    - D. identifies and describes State and local programs for controlling pollution added from nonpoint sources to, and improving the quality of, each such portion of the navigable waters, including but not limited to those programs which are receiving Federal assistance under subsections (h) and (i) of this section.
  - 2. Information used in preparation - In developing the report required by this section, the State (A) may rely upon information developed pursuant to sections 1288, 1313(e), 1314(f), 1315(b), and 1324 of this title, and other information as appropriate, and (B) may utilize appropriate elements of the waste treatment management plans developed pursuant to sections 1288(b) and 1313 of this title, to the extent such elements are consistent with and fulfill the requirements of this section.
- b. State management programs
  - 1. In general - The Governor of each State, for that State or in combination with adjacent States, shall, after notice and opportunity for public comment, prepare and submit to the Administrator for approval a management program which such State proposes to implement in the first four fiscal years beginning after the date of submission of such management program for controlling pollution added from nonpoint sources to the navigable waters within the State and improving the quality of such waters.
  - 2. Specific contents - Each management program proposed for implementation under this subsection shall include each of the following:
    - A. An identification of the best management practices and measures which will be undertaken to reduce pollutant loadings resulting from each category, subcategory, or

particular nonpoint source designated under paragraph (1)(B), taking into account the impact of the practice on ground water quality.

- B. An identification of programs (including, as appropriate, nonregulatory or regulatory programs for enforcement, technical assistance, financial assistance, education, training, technology transfer, and demonstration projects) to achieve implementation of the best management practices by the categories, subcategories, and particular nonpoint sources designated under subparagraph (A).
  - C. A schedule containing annual milestones for (i) utilization of the program implementation methods identified in subparagraph (B), and (ii) implementation of the best management practices identified in subparagraph (A) by the categories, subcategories, or particular nonpoint sources designated under paragraph (1)(B). Such schedule shall provide for utilization of the best management practices at the earliest practicable date.
  - D. A certification of the attorney general of the State or States (or the chief attorney of any State water pollution control agency which has independent legal counsel) that the laws of the State or States, as the case may be, provide adequate authority to implement such management program or, if there is not such adequate authority, a list of such additional authorities as will be necessary to implement such management program. A schedule and commitment by the State or States to seek such additional authorities as expeditiously as practicable.
  - E. Sources of Federal and other assistance and funding (other than assistance provided under subsections (h) and (i) of this section) which will be available in each of such fiscal years for supporting implementation of such practices and measures and the purposes for which such assistance will be used in each of such fiscal years.
  - F. An identification of Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications or development projects for their effect on water quality pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983, to determine whether such assistance applications or development projects would be consistent with the program prepared under this subsection; for the purposes of this subparagraph, identification shall not be limited to the assistance programs or development projects subject to Executive Order 12372 but may include any programs listed in the most recent Catalog of Federal Domestic Assistance which may have an effect on the purposes and objectives of the State's nonpoint source pollution management program.
- 3. Utilization of local and private experts - In developing and implementing a management program under this subsection, a State shall, to the maximum extent practicable, involve local public and private agencies and organizations which have expertise in control of nonpoint sources of pollution.
  - 4. Development on watershed basis - A state shall, to the maximum extent practicable, develop and implement a management program under this subsection on a watershed-by-watershed basis within such State.

#### Administrative provisions

- 1. Cooperation requirement - Any report required by subsection (a) of this section and any management program and report required by subsection (b) of this section shall be developed in cooperation with local, substate regional, and interstate entities which are actively planning for the implementation of nonpoint source pollution controls and have either been certified by the Administrator in accordance with section 1288 of this title, have worked jointly with the State on water quality management planning under section 1285(j) of this title, or have been designated by the State legislative body or Governor as water quality management planning agencies for their geographic areas.

2. Time period for submission of reports and management programs - Each report and management program shall be submitted to the Administrator during the 18-month period beginning on February 4, 1987.
- d. Approval or disapproval of reports and management programs
1. Deadline - Subject to paragraph (2), not later than 180 days after the date of submission to the Administrator of any report or management program under this section (other than subsections (h), (i), and (k) of this section), the Administrator shall either approve or disapprove such report or management program, as the case may be. The Administrator may approve a portion of a management program under this subsection. If the Administrator does not disapprove a report, management program, or portion of a management program in such 180-day period, such report, management program, or portion shall be deemed approved for purposes of this section.
  2. Procedure for disapproval - If, after notice and opportunity for public comment and consultation with appropriate Federal and State agencies and other interested persons, the Administrator determines that -
    - A. the proposed management program or any portion thereof does not meet the requirements of subsection (b)(2) of this section or is not likely to satisfy, in whole or in part, the goals and requirements of this chapter;
    - B. adequate authority does not exist, or adequate resources are not available, to implement such program or portion;
    - C. the schedule for implementing such program or portion is not sufficiently expeditious; or
    - D. the practices and measures proposed in such program or portion are not adequate to reduce the level of pollution in navigable waters in the State resulting from nonpoint sources and to improve the quality of navigable waters in the State; the Administrator shall within 6 months of the receipt of the proposed program notify the State of any revisions or modifications necessary to obtain approval. The State shall thereupon have an additional 3 months to submit its revised management program and the Administrator shall approve or disapprove such revised program within three months of receipt.
  3. Failure of State to submit report - If a Governor of a State does not submit the report required by subsection (a) of this section within the period specified by subsection (c)(2) of this section, the Administrator shall, within 30 months after February 4, 1987, prepare a report for such State which makes the identifications required by paragraphs (1)(A) and (1)(B) of subsection (a) of this section. Upon completion of the requirement of the preceding sentence and after notice and opportunity for comment, the Administrator shall report to Congress on his actions pursuant to this section.
- e. Local management programs; technical assistance - If a State fails to submit a management program under subsection (b) of this section or the Administrator does not approve such a management program, a local public agency or organization which has expertise in, and authority to, control water pollution resulting from nonpoint sources in any area of such State which the Administrator determines is of sufficient geographic size may, with approval of such State, request the Administrator to provide, and the Administrator shall provide, technical assistance to such agency or organization in developing for such area a management program which is described in subsection (b) of this section and can be approved pursuant to subsection (d) of this section. After development of such management program, such agency or organization shall submit such management program to the Administrator for approval. If the Administrator approves such management program, such agency or organization shall be eligible to receive financial assistance under subsection (h) of this section for implementation of such management program as if such agency or organization were a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section

were approved under this section. Such financial assistance shall be subject to the same terms and conditions as assistance provided to a State under subsection (h) of this section.

- f. Technical assistance for States - Upon request of a State, the Administrator may provide technical assistance to such State in developing a management program approved under subsection (b) of this section for those portions of the navigable waters requested by such State.
- g. Interstate management conference
  - 1. Convening of conference; notification; purpose - If any portion of the navigable waters in any State which is implementing a management program approved under this section is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of pollution from nonpoint sources in another State, such State may petition the Administrator to convene, and the Administrator shall convene, a management conference of all States which contribute significant pollution resulting from nonpoint sources to such portion. If, on the basis of information available, the Administrator determines that a State is not meeting applicable water quality standards or the goals and requirements of this chapter as a result, in whole or in part, of significant pollution from nonpoint sources in another State, the Administrator shall notify such States. The Administrator may convene a management conference under this paragraph not later than 180 days after giving such notification, whether or not the State which is not meeting such standards requests such conference. The purpose of such conference shall be to develop an agreement among such States to reduce the level of pollution in such portion resulting from nonpoint sources and to improve the water quality of such portion. Nothing in such agreement shall supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws. This subsection shall not apply to any pollution which is subject to the Colorado River Basin Salinity Control Act (43 U.S.C. 1571 et seq.). The requirement that the Administrator convene a management conference shall not be subject to the provisions of section 1365 of this title.
  - 2. State management program requirement - To the extent that the States reach agreement through such conference, the management programs of the States which are parties to such agreements and which contribute significant pollution to the navigable waters or portions thereof not meeting applicable water quality standards or goals and requirements of this chapter will be revised to reflect such agreement. Such management programs shall be consistent with Federal and State law.
- h. Grant program
  - 1. Grants for implementation of management programs - Upon application of a State for which a report submitted under subsection (a) of this section and a management program submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants, subject to such terms and conditions as the Administrator considers appropriate, under this subsection to such State for the purpose of assisting the State in implementing such management program. Funds reserved pursuant to section 1285(j)(5) of this title may be used to develop and implement such management program.
  - 2. Applications - An application for a grant under this subsection in any fiscal year shall be in such form and shall contain such other information as the Administrator may require, including an identification and description of the best management practices and measures which the State proposes to assist, encourage, or require in such year with the Federal assistance to be provided under the grant.
  - 3. Federal share - The Federal share of the cost of each management program implemented with Federal assistance under this subsection in any fiscal year shall not exceed 60 percent of the cost incurred by the State in implementing such management program and shall be made on condition that the non-Federal share is provided from non-Federal sources.

4. (4) Limitation on grant amounts - Notwithstanding any other provision of this subsection, not more than 15 percent of the amount appropriated to carry out this subsection may be used to make grants to any one State, including any grants to any local public agency or organization with authority to control pollution from nonpoint sources in any area of such State.
5. Priority for effective mechanisms - For each fiscal year beginning after September 30, 1987, the Administrator may give priority in making grants under this subsection, and shall give consideration in determining the Federal share of any such grant, to States which have implemented or are proposing to implement management programs which will -
  - A. control particularly difficult or serious nonpoint source pollution problems, including, but not limited to, problems resulting from mining activities;
  - B. implement innovative methods or practices for controlling nonpoint sources of pollution, including regulatory programs where the Administrator deems appropriate;
  - C. control interstate nonpoint source pollution problems; or
  - D. carry out ground water quality protection activities which the Administrator determines are part of a comprehensive nonpoint source pollution control program, including research, planning, ground water assessments, demonstration programs, enforcement, technical assistance, education, and training to protect ground water quality from nonpoint sources of pollution.
6. Availability for obligation - The funds granted to each State pursuant to this subsection in a fiscal year shall remain available for obligation by such State for the fiscal year for which appropriated. The amount of any such funds not obligated by the end of such fiscal year shall be available to the Administrator for granting to other States under this subsection in the next fiscal year.
7. Limitation on use of funds - States may use funds from grants made pursuant to this section for financial assistance to persons only to the extent that such assistance is related to the costs of demonstration projects.
8. Satisfactory progress - No grant may be made under this subsection in any fiscal year to a State which in the preceding fiscal year received a grant under this subsection unless the Administrator determines that such State made satisfactory progress in such preceding fiscal year in meeting the schedule specified by such State under subsection (b)(2) of this section.
9. Maintenance of effort - No grant may be made to a State under this subsection in any fiscal year unless such State enters into such agreements with the Administrator as the Administrator may require to ensure that such State will maintain its aggregate expenditures from all other sources for programs for controlling pollution added to the navigable waters in such State from nonpoint sources and improving the quality of such waters at or above the average level of such expenditures in its two fiscal years preceding February 4, 1987.
10. Request for information - The Administrator may request such information, data, and reports as he considers necessary to make the determination of continuing eligibility for grants under this section. •
11. Reporting and other requirements - Each State shall report to the Administrator on an annual basis concerning (A) its progress in meeting the schedule of milestones submitted pursuant to subsection (b)(2)(C) of this section, and (B) to the extent that appropriate information is available, reductions in nonpoint source pollutant loading and improvements in water quality for those navigable waters or watersheds within the State which were identified pursuant to subsection (a)(1)(A) of this section resulting from implementation of the management program.
12. Limitation on administrative costs - For purposes of this subsection, administrative costs in the form of salaries, overhead, or indirect costs for services provided and charged against activities and programs carried out with a grant under this subsection shall not exceed in any fiscal year 10 percent of the amount of the grant in such year, except that costs of implementing



enforcement and regulatory activities, education, training, technical assistance, demonstration projects, and technology transfer programs shall not be subject to this limitation.

- i. Grants for protecting groundwater quality
  - 1. Eligible applicants and activities - Upon application of a State for which a report submitted under subsection (a) of this section and a plan submitted under subsection (b) of this section is approved under this section, the Administrator shall make grants under this subsection to such State for the purpose of assisting such State in carrying out groundwater quality protection activities which the Administrator determines will advance the State toward implementation of a comprehensive nonpoint source pollution control program. Such activities shall include, but not be limited to, research, planning, groundwater assessments, demonstration programs, enforcement, technical assistance, education and training to protect the quality of groundwater and to prevent contamination of groundwater from nonpoint sources of pollution.
  - 2. Applications - An application for a grant under this subsection shall be in such form and shall contain such information as the Administrator may require.
  - 3. Federal share; maximum amount - The Federal share of the cost of assisting a State in carrying out groundwater protection activities in any fiscal year under this subsection shall be 50 percent of the costs incurred by the State in carrying out such activities, except that the maximum amount of Federal assistance which any State may receive under this subsection in any fiscal year shall not exceed \$150,000.
  - 4. (4) Report - The Administrator shall include in each report transmitted under subsection (m) of this section a report on the activities and programs implemented under this subsection during the preceding fiscal year.
- j. Authorization of appropriations - There is authorized to be appropriated to carry out subsections (h) and (i) of this section not to exceed \$70,000,000 for fiscal year 1988, \$100,000,000 per fiscal year for each of fiscal years 1989 and 1990, and \$130,000,000 for fiscal year 1991; except that for each of such fiscal years not to exceed \$7,500,000 may be made available to carry out subsection (i) of this section. Sums appropriated pursuant to this subsection shall remain available until expended.
- k. Consistency of other programs and projects with management programs - The Administrator shall transmit to the Office of Management and Budget and the appropriate Federal departments and agencies a list of those assistance programs and development projects identified by each State under subsection (b)(2)(F) of this section for which individual assistance applications and projects will be reviewed pursuant to the procedures set forth in Executive Order 12372 as in effect on September 17, 1983. Beginning not later than sixty days after receiving notification by the Administrator, each Federal department and agency shall modify existing regulations to allow States to review individual development projects and assistance applications under the identified Federal assistance programs and shall accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, the concerns of the State regarding the consistency of such applications or projects with the State nonpoint source pollution management program.
- l. Collection of information - The Administrator shall collect and make available, through publications and other appropriate means, information pertaining to management practices and implementation methods, including, but not limited to, (1) information concerning the costs and relative efficiencies of best management practices for reducing nonpoint source pollution; and (2) available data concerning the relationship between water quality and implementation of various management practices to control nonpoint sources of pollution.
- m. Reports of Administrator
  - 1. Annual reports - Not later than January 1, 1988, and each January 1 thereafter, the Administrator shall transmit to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate, a report for the preceding fiscal year on the activities and programs implemented under this section and

the progress made in reducing pollution in the navigable waters resulting from nonpoint sources and improving the quality of such waters.

2. Final report - Not later than January 1, 1990, the Administrator shall transmit to Congress a final report on the activities carried out under this section. Such report, at a minimum, shall -
  - A. describe the management programs being implemented by the States by types and amount of affected navigable waters, categories and subcategories of nonpoint sources, and types of best management practices being implemented;
  - B. describe the experiences of the States in adhering to schedules and implementing best management practices;
  - C. describe the amount and purpose of grants awarded pursuant to subsections (h) and (i) of this section;
  - D. identify, to the extent that information is available, the progress made in reducing pollutant loads and improving water quality in the navigable waters;
  - E. indicate what further actions need to be taken to attain and maintain in those navigable waters (i) applicable water quality standards, and (ii) the goals and requirements of this chapter;
  - F. include recommendations of the Administrator concerning future programs (including enforcement programs) for controlling pollution from nonpoint sources; and
  - G. identify the activities and programs of departments, agencies, and instrumentalities of the United States which are inconsistent with the management programs submitted by the States and recommend modifications so that such activities and programs are consistent with and assist the States in implementation of such management programs.
- n. Set aside for administrative personnel - Not less than 5 percent of the funds appropriated pursuant to subsection (j) of this section for any fiscal year shall be available to the Administrator to maintain personnel levels at the Environmental Protection Agency at levels which are adequate to carry out this section in such year.

#### **SOURCE**

(June 30, 1948, ch. 758, title III, Sec. 319, as added Feb. 4, 1987, Pub. L. 100-4, title III, Sec. 316(a), 101 Stat. 52.)

#### **REFTEXT**

#### **REFERENCES IN TEXT**

Executive Order 12372, referred to in subsecs. (b)(2)(F) and (k), is Ex. Ord. No. 12372, July 14, 1982, 47 F.R. 30959, as amended, which is set out under section 6506 of Title 31, Money and Finance.

The Colorado River Basin Salinity Control Act, referred to in subsec. (g)(1), is Pub. L. 93-320, June 24, 1974, 88 Stat. 266, as amended, which is classified principally to chapter 32A (Sec. 1571 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1571 of Title 43 and Tables.

#### **SECREF**

#### **SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 1268, 1270, 1281, 1285, 1314, 1330, 1377, 1381, 1383, 1386, 1414b of this title; title 16 sections 1455b, 3838c.

## Chapter 39.34 RCW, Interlocal Cooperation Act

### Sections

39.34.010	Declaration of purpose.
39.34.020	Definitions.
39.34.030	Joint powers -- Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies -- Financing of joint projects.
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39.34.180	Criminal justice responsibilities -- Interlocal agreements.
39.34.900	Short title.
39.34.910	Severability -- 1967 c 239.
39.34.920	Effective date -- 1967 c 239.

**RCW 39.34.010 Declaration of purpose.** It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. [1967 c 239 § 1.]

**RCW 39.34.020 Definitions.** For the purposes of this chapter, the term "public agency" shall mean any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

The term "state" shall mean a state of the United States. [1985 c 33 § 1; 1979 c 36 § 1; 1977 ex.s. c 283 § 13; 1975 1st ex.s. c 115 § 1; 1973 c 34 § 1; 1971 c 33 § 1; 1969 c 88 § 1; 1969 c 40 § 1; 1967 c 239 § 3.]

**RCW 39.34.030 Joint powers -- Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies -- Financing of joint projects.** (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly

with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter: PROVIDED, That any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 RCW whose partners are limited solely to participating public agencies and the funds of any such corporation or partnership shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (a), (c), (d), (e) and (f) enumerated in subdivision (3) hereof, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented;

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of . . . . joint board".

(5) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility.

(6) Financing of joint projects by agreement shall be as provided by law. [1992 c 161 § 4; 1990 c 33 § 568; 1981 c 308 § 2; 1972 ex.s. c 81 § 1; 1967 c 239 § 4.]

#### **RCW 39.34.040 Agreements to be filed -- Status of interstate agreements -- Real party in interest**

**-- Actions.** Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state. [1995 c 22 § 1; 1992 c 161 § 5; 1967 c 239 § 5.]

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• Chapter 39.34 RCW, *Interlocal Cooperation Act*

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**RCW 39.34.050 Duty to submit agreement to jurisdictional state officer or agency.** In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control. The agreement shall be approved or disapproved by the state officer or agency with regard to matters within his, her, or its jurisdiction within ninety days after receipt of the agreement. If a state officer or agency fails to act within the ninety-day time limit, the agreement shall be deemed approved by that state officer or agency. [1992 c 161 § 6; 1967 c 239 § 6.]

**RCW 39.34.055 Public purchase agreements with public benefit nonprofit corporations.** The office of state procurement within the department of general administration may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the office of state procurement. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state. [1994 c 98 § 1.]

**RCW 39.34.060 Participating agencies may appropriate funds and provide personnel, property, and services.** Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give, or otherwise supply property, personnel, and services to the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking. [1992 c 161 § 7; 1967 c 239 § 7.]

**RCW 39.34.070 Authority of joint boards to receive loans or grants.** Any joint board created pursuant to the provisions of this chapter is hereby authorized to accept loans or grants of federal, state or private funds in order to accomplish the purposes of this chapter provided each of the participating public agencies is authorized by law to receive such funds. [1967 c 239 § 8.]

**RCW 39.34.080 Contracts to perform governmental activities which each contracting agency is authorized to perform.** Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. [1967 c 239 § 9.]

**RCW 39.34.085 Agreements for operation of bus services.** In addition to the other powers granted by chapter 39.34 RCW, one or more cities or towns or a county, or any combination thereof, may enter into agreements with each other or with a public transportation agency of a contiguous state, or contiguous Canadian province, to allow a city or such other transportation agency to operate bus service for the transportation of the general public within the territorial boundaries of such city and/or county or to allow such city and/or county to operate such bus service within the jurisdiction of such other public agency when no such existing bus certificate of public convenience and necessity has been authorized by the Washington utilities and transportation commission: PROVIDED, HOWEVER, That such transportation may extend beyond the territorial boundaries of either party to the agreement if the agreement so provides, and if such service is not in conflict with existing bus service authorized by the Washington utilities and transportation commission. The provisions of this section shall be cumulative and nonexclusive and shall not affect any other right granted by this chapter or any other provision of law. [1977 c 46 § 1; 1969 ex.s. c 139 § 1.]

**RCW 39.34.090 Agencies' contracting authority regarding electricity, utilities' powers, preserved.** Nothing in this chapter shall be construed to increase or decrease existing authority of any public agency of this state to enter into agreements or contracts with any other public agency of this state or of any other state or the

United States with regard to the generation, transmission, or distribution of electricity or the existing powers of any private or public utilities. [1967 c 239 § 10.]

**RCW 39.34.100 Powers conferred by chapter are supplemental.** The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of any public agency. [1967 c 239 § 11.]

**RCW 39.34.110 Powers otherwise prohibited by Constitutions or federal laws.** No power, privilege, or other authority shall be exercised under this chapter where prohibited by the state Constitution or the Constitution or laws of the federal government. [1967 c 239 § 12.]

**RCW 39.34.130 Transactions between state agencies -- Charging of costs -- Regulation by director of financial management.** Except as otherwise provided by law, the full costs of a state agency incurred in providing services or furnishing materials to or for another agency under chapter 39.34 RCW or any other statute shall be charged to the agency contracting for such services or materials and shall be repaid and credited to the fund or appropriation against which the expenditure originally was charged. Amounts representing a return of expenditures from an appropriation shall be considered as returned loans of services or of goods, supplies or other materials furnished, and may be expended as part of the original appropriation to which they belong without further or additional appropriation. Such interagency transactions shall be subject to regulation by the director of financial management, including but not limited to provisions for the determination of costs, prevention of interagency contract costs beyond those which are fully reimbursable, disclosure of reimbursements in the governor's budget and such other requirements and restrictions as will promote more economical and efficient operations of state agencies.

Except as otherwise provided by law, this section shall not apply to the furnishing of materials or services by one agency to another when other funds have been provided specifically for that purpose pursuant to law. [1979 c 151 § 45; 1969 ex.s. c 61 § 1.]

**RCW 39.34.140 Transactions between state agencies -- Procedures for payments through transfers upon accounts.** The director of financial management may establish procedures whereby some or all payments between state agencies may be made by transfers upon the accounts of the state treasurer in lieu of making such payments by warrant or check. Such procedures, when established, shall include provision for corresponding entries to be made in the accounts of the affected agencies. [1979 c 151 § 46; 1969 ex.s. c 61 § 2.]

**RCW 39.34.150 Transactions between state agencies -- Advancements.** State agencies are authorized to advance funds to defray charges for materials to be furnished or services to be rendered by other state agencies. Such advances shall be made only upon the approval of the director of financial management, or his order made pursuant to an appropriate regulation requiring advances in certain cases. An advance shall be made from the fund or appropriation available for the procuring of such services or materials, to the state agency which is to perform the services or furnish the materials, in an amount no greater than the estimated charges therefor. [1979 c 151 § 47; 1969 ex.s. c 61 § 3.]

**RCW 39.34.160 Transactions between state agencies -- Time limitation for expenditure of advance -- Unexpended balance.** An advance made under RCW 39.34.130 through 39.34.150 from appropriated funds shall be available for expenditure for no longer than the period of the appropriation from which it was made. When the actual costs of materials and services have been finally determined, and in no event later than the lapsing of the appropriation, any unexpended balance of the advance shall be returned to the agency for credit to the fund or account from which it was made. [1969 ex.s. c 61 § 4.]

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**RCW 39.34.170 Transactions between state agencies -- Powers and authority cumulative.** The powers and authority conferred by RCW 39.34.130 through 39.34.160 shall be construed as in addition and supplemental to powers or authority conferred by any other law, and not to limit any other powers or authority of any public agency expressly granted by any other statute. [1969 ex.s. c 61 § 5.]

**RCW 39.34.180 Criminal justice responsibilities -- Interlocal agreements.** (1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. [1996 c 308 § 1.]

**RCW 39.34.910 Severability -- 1967 c 239.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 239 § 14.]